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MONTANA LEGISLATIVE HISTORY

Chapter 397 19 79

Bill H _____ S 208 Original bill & history ✓ C

H. Committee on Labor & Employment			S. Committee on LABOR & Employment		
Hearing Date(s)	3/6	✓ C	Hearing Date(s)	2/1	✓ C
	3/8	✓ C		~~2/8~~ ✓ 2/13	✓ C
		C			C
		C			C
Date Out	3-8	✓ C	Date Out	2-13	✓

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

CHAPTER NO. 392

SENATE BILL NO. 208

INTRODUCED BY HAFFERMAN, LOWE

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

January 23, 1979	Introduced and referred to Committee on Labor and Employment Relations.
February 6, 1979	Committee recommend bill do pass as amended. Report adopted.
February 8, 1979	Printed and placed on members' desks.
February 9, 1979	Motion pass consideration.
	On motion taken from second reading and rereferred to Committee on Labor and Employment Relations.
February 13, 1979	Committee recommend bill do pass as amended. Report adopted.
February 14, 1979	Printed and placed on members' desks.
February 15, 1979	Second reading, do pass.
February 17, 1979	Considered correctly engrossed.
February 19, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 20, 1979	Introduced and referred to Committee on Labor and Employment Relations.

March 8, 1979	Committee recommend bill be concurred in. Report adopted.
March 12, 1979	Second reading, concurred in as amended.
March 16, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 17, 1979	Returned from second house. Concurred in as amended.
March 19, 1979	Second reading, pass consideration.
March 20, 1979	Second reading, amendments adopted.
March 21, 1979	Third reading, amendments adopted. Sent to enrolling.
	Reported correctly enrolled.

INTRODUCED BY Senate BILL NO. 208
Hoffman Lewis

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO LABOR; ENACTING SECTION 39-1-101, MCA; AND REPEALING SECTIONS 41-901 THROUGH 41-909, 92-613, AND 92-1340, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. 39-1-101. Definitions. As used in this chapter, unless the context requires otherwise the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry as provided for in 2-15-1701.

(2) "Department" means the department of labor and industry as provided for in 2-15-1701.

Section 2. Section 39-1-102, MCA, is amended to read:

"39-1-102. Duties of department. The department ~~of labor and industry~~ shall ~~be charged with the duty of enforcing~~ enforce all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, and all laws relating to child labor ~~regulating~~ which regulate the employment of children in any manner, and to shall administer the laws of the state relating to free employment offices, and all other state labor laws ~~enacted by legislation~~."

Section 3. Section 39-2-103, MCA, is amended to read:

"39-2-103. Confidential employment. The obligations peculiar to confidential employments are defined in the ~~chapter on trusts~~ laws relating to trusts and fiduciary relationships."

Section 4. Section 39-2-503, MCA, is amended to read:

"39-2-503. Termination at will. An employment having no specified term may be terminated at the will of either party on notice to the other, except where otherwise provided by this chapter, 28-10-301 through 28-10-303, 28-10-502, and 30-11-601 through 30-11-605, and ~~except as provided in~~ 39-2-302."

Section 5. Section 39-2-703, MCA, is amended to read:

"39-2-703. Liability of railway corporation for negligence of fellow servants. (1) Every person or corporation operating a railway or railroad in this state ~~shall be~~ is liable for all damages sustained by any employee of such person or corporation in consequence of the neglect of any other employee ~~or employees~~ thereof or by the mismanagement of any other employee ~~or employees~~ thereof and in consequence of the willful wrongs, whether of commission or omission, of any other employee ~~or employees~~ thereof when

such neglect, mismanagement, or wrongs are in any manner connected with the use and operation of any railway or railroad on or about which ~~they shall be~~ he is employed. ~~and no~~ No contract which restricts such liability ~~shall be~~ is legal or binding.

(2) In case of the death of any such employee in consequence of any injury or damage so sustained, the right of action provided by subsection (1) ~~of this section~~ shall survive and may be prosecuted and maintained by his heirs or personal representatives.

(3) Every railway corporation doing business in this state, including electric railway corporations, ~~shall be~~ is liable for ~~all~~ damages sustained by an employee thereof within this state ~~without contributing negligence on his part~~, subject to the provisions of 27-1-702, when such damages are caused by the negligence of any train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, motorman, or of any other employee who has superintendence of any stationary or hand signal.

(4) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into, either before or after the injury, between the person injured and any of the employers named in subsection (3) ~~of this section shall constitute any~~ is a bar or defense

to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act."

Section 6. Section 39-2-704, MCA, is amended to read:

"39-2-704. Liability of mining company for negligence of fellow servants. (1) Every company, corporation, or individual, operating any mine, smelter, or mill for the refining of ores, ~~shall be~~ is liable for any damages sustained by any ~~employees~~ employee thereof within this state, ~~without contributing negligence on his part~~, subject to the provisions of 27-1-702, when such damage is caused by the negligence of any superintendent, foreman, shift boss, hoisting or other engineer, or craneman.

(2) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into before the injury between the person injured and any of the employers named in this section ~~shall constitute any~~ is a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

(3) In case of the death of any such ~~employees~~ employee in consequence of any injury or damages so sustained, the right of action ~~shall survive~~ survives and may be prosecuted and maintained by ~~their~~ his heirs or personal representatives."

Section 7. Section 39-2-803, MCA, is amended to read:

"39-2-803. Blacklisting prohibited. If any company or corporation in this state authorizes or allows any of its agents to blacklist or any person does blacklist any discharged employee or attempts by word or writing or any other means whatever to prevent any discharged employee or any employee who may have voluntarily left ~~said~~ the company's service from obtaining employment with another person, except as provided for in 39-2-802, such company or corporation or person is liable in punitive damages to such ~~employees~~ employee so prevented from obtaining employment, to be recovered by him in a civil action, and is also punishable as provided in 39-2-804."

Section 8. Section 39-3-104, MCA, is amended to read:

"39-3-104. Equal pay for women for equivalent service. (1) It ~~shall be~~ is unlawful for ~~any person, firm,~~ the state, or any county, municipal entity, ~~or~~ school district, public or private corporation, person, or firm to employ ~~any women~~ or women in any occupation ~~or calling~~ within the state ~~of~~ Montana for ~~salaries, wages, or~~ compensation ~~which are~~ less than that paid to men for equivalent service or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of employment of any kind or description.

(2) ~~Any person, firm,~~ If the state, or any county, municipal entity, ~~or~~ school district, ~~officers or~~ public or private corporation, ~~violating~~ person, or firm violates any of the provisions of subsection (1) ~~of this section shall be deemed~~ it is guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 or more than $500 for each offense."

Section 9. Section 39-3-202, MCA, is amended to read:

"39-3-202. Rulemaking power of commissioner. The commissioner is authorized to issue, amend, and enforce rules for the purpose of carrying out the provisions of the ~~[act]~~ this part."

Section 10. Section 39-3-203, MCA, is amended to read:

"39-3-203. Employer to notify employee on written demand as to rate of wages and date of paydays. (1) Each employer or an authorized representative of the employer shall, on written demand, prior to the commencing of work, notify each employee as to the rate of wages to be paid, whether by the hour, day, week, month, or ~~yearly basis~~ year, and date of paydays. Such notification ~~shall~~ must be in writing to each employee or ~~the~~ by posting of notice in a conspicuous place.

(2) The provisions of this ~~[section]~~ and 39-3-204 ~~shall~~ do not apply ~~in respect~~ to an employer who has entered into a signed collective bargaining agreement, when such agreement contains conditions of employment, wages to be

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received, and hours to be worked, or to employers engaged in agriculture or stockraising; provided, however, such employers shall ~~conform~~ comply with the provisions of 39-3-205."

Section 11. Section 39-3-204, MCA, is amended to read:

"39-3-204. Payment of wages generally. (1) Every employer of labor in the state of Montana shall pay to each ~~of his employees~~ employee the wages earned by such ~~employees~~ employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value thereof, and no person for whom labor has been performed ~~shall~~ may withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the same ~~become~~ are due and payable. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever such deductions are a part of the conditions of employment, or other deductions provided for by law.

(2) If at such time of payment of wages any employee ~~shall be~~ is absent from the regular place of labor, he ~~shall~~ be is entitled to such payment at any time thereafter.

(3) Provisions of this ~~[section]~~ and 39-3-203 ~~shall~~ do not apply to any professional, supervisory, or technical ~~employees~~ employee who by custom ~~receive their~~ receives his wages earned at least once monthly."

Section 12. Section 39-3-208, MCA, is amended to read:

"39-3-208. Contracts in violation of part void. Any contract or agreement made between any person, partnership, or corporation and any ~~parties~~ party in his, or its, ~~or their~~ employ ~~whose provision shall be in violation, evasion~~ the provisions of which violate, evade, or ~~circumvention of~~ circumvent this part ~~shall be~~ is unlawful and void, but such employee may sue to recover his wages earned, together with ~~such~~ the 5% penalty specified in 39-3-206 or separately to recover the penalty if the wages have been paid."

Section 13. Section 39-3-210, MCA, is amended to read:

"39-3-210. Investigative powers of commissioner. (1) The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters ~~as~~ which they may ~~deem~~ consider appropriate to determine whether any person has violated any provision of this ~~[act]~~ part or any rule issued hereunder or which may aid in the enforcement of the provisions of this ~~[act]~~ part.

(2) The commissioner or his authorized representatives ~~shall have power to~~ may administer oaths and examine witnesses under oath; issue subpoenas; compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony; and take depositions and affidavits in any proceeding before the

commissioner."

Section 14. Section 39-3-211, MCA, is amended to read:

"39-3-211. Commissioner to take wage assignments. Whenever the commissioner determines that one or more employees have claims for unpaid wages, he shall, upon the written request of the employee, take an assignment of the claim in trust for such employee and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this ~~[act]~~ part. With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this section."

Section 15. Section 39-3-214, MCA, is amended to read:

"39-3-214. Court costs and attorneys' fees. (1) Whenever it ~~shall become~~ is necessary for the employee to enter or maintain a suit at law for the recovery or collection of wages due as provided for by this part, ~~then~~ ~~such~~ a resulting judgment ~~shall~~ must include a reasonable attorney's fee in favor of the successful party, to be taxed as part of the costs in the case.

(2) Any judgment for the plaintiff in a proceeding pursuant to this ~~[act]--shall~~ part must include all costs reasonably incurred in connection with the proceeding, including attorneys' fees.

(3) If the proceeding is maintained by the commissioner, no court costs or fees ~~shall be~~ are required

of him nor ~~shall he be~~ is he required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding."

Section 16. Section 39-3-501, MCA, is amended to read:

"39-3-501. Certain laws extended to certain employers in mineral and oil industry. For the purposes of this part, all the provisions of ~~[41-1301 to 41-1311] shall~~ part 2 of this chapter extend to and govern every person, firm, partnership, or corporation engaged in the business of extracting or of extracting and refining or reducing metals and minerals or mining for coal or drilling for oil, save ~~and~~ except such persons, firms, partnerships, or corporations as have a free and unencumbered title to not less than one-half the fee of the property being worked. For this purpose, an outstanding unpaid or unredeemed tax sale certificate ~~shall~~ is not be considered an encumbrance."

Section 17. Section 39-3-504, MCA, is amended to read:

"39-3-504. Report of violations directly to county attorney by ~~employees~~ employee. Any ~~employees~~ employee may make complaint ~~direct~~ directly to the county attorney relative to any violation of this part~~, 39-3-104, part 8 of chapter 2~~, or part 2 of this chapter."

Section 18. Section 39-3-505, MCA, is amended to read:

"39-3-505. County attorney to notify commissioner of ~~violations~~ violation reported directly by ~~employees~~

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employee. The county attorney of the county shall promptly notify the commissioner of labor and industry of any complaint made by any employee relative to the violation of any of the provisions of this part~~, 39-3-104, part 8 of chapter 2~~ or part 2 of this chapter and shall in writing keep ~~said~~ the commissioner advised of each step in any proceeding taken by ~~said~~ the county attorney thereunder."

Section 19. Section 39-3-506, MCA, is amended to read:

"39-3-506. County attorney to file complaint in district court on belief of violation. If ~~said~~ a county attorney believes after receiving ~~said~~ information that the provisions of this part~~, 39-3-104, part 8 of chapter 2~~ or part 2 of this chapter have been violated and that such violation ~~or violations~~ was ~~or were~~ willful or that the financial condition of the employer is such as to endanger employees in receiving prompt payment or collection of wages, ~~it shall be his duty to~~ he shall file the complaint ~~aforesaid~~ in ~~said~~ district court. All proceedings upon such complaint ~~shall~~ must be promptly prosecuted."

Section 20. Section 39-3-604, MCA, is amended to read:

"39-3-604. Bond to be filed by lessee -- bond requirements. (1) Every person who leases from another person premises for the purpose of conducting therein a business as a restaurant, bar, or tavern is hereby required to file a bond equal to at least double the amount of the

projected semimonthly payroll with the commissioner of labor and industry. ~~Said~~ This bond ~~shall~~ must at all times be kept in full force and effect ~~and any cancellation or revocation thereof or withdrawal of the sureties therefrom shall automatically revoke and suspend the certificate issued to the lessee of this part until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided.~~

(2) The bond ~~and affidavit~~ required by subsection (1) of this section ~~shall~~ must be filed with the commissioner of labor and industry. The state ~~of Montana shall~~ must be named as the obligee therein, with good and sufficient sureties to be approved by the attorney general.

(3) Such bond ~~shall~~ must be conditioned to assure that in any lease transaction of the type referred to in 39-3-608 the persons who perform labor or other personal services for the lessee are guaranteed their wages in the event the lessee ceases operation of the business for any reason and is unable to pay the wages due and owing the employees and to assure payment due the division of employment security as a result of payroll taxes."

Section 21. Section 39-4-102, MCA, is amended to read:

"39-4-102. Drivers and attendants of motor buses. (1) Drivers or attendants of motor buses employed in the state ~~shall~~ may not be employed for more than 8 hours in the any

24-hour period. Drivers or attendants of motor buses ~~shall~~ must be allowed a rest of at least 12 hours between the completion of their services in any 24-hour period and the beginning of their services in the ~~next~~ succeeding 24-hour period. In computing the number of hours of employment made by the provisions of this section, evidence may be introduced showing that part of ~~said~~ such time ~~shall be~~ is consumed prior to entry within the state.

(2) The provisions of this section ~~shall~~ do not ~~be effective~~ apply when life is in danger ~~of destruction~~ or ~~in case of danger of~~ property is in imminent danger of destruction; or in case of delay due to accident or ~~unpassable~~ impassable roads, abnormal road conditions, or snow blockades; or ~~shall not affect the delay of~~ when mails for ~~said~~ the drivers or attendants are delayed.

(3) ~~Attendants~~ "Attendant", for the purpose of this section, ~~are~~ is defined as any employee engaged for a portion of ~~the 24-hour period in~~ a day driving or repairing a motor bus and who is required to remain on ~~said~~ the vehicle as a relief driver or mechanic for time in excess of the 8-hour period, ~~of~~ for which he ~~shall be~~ is rightly employed.

(4) Any employer or supervisor in charge of ~~employee~~ employees who ~~shall require~~ requires a driver or attendant as above defined to labor contrary to the provisions of this

section ~~shall be declared~~ is guilty of a misdemeanor and upon conviction ~~shall be punished~~ is punishable by a fine of not less than $100 or more than $600 or by imprisonment of not less than 30 days or more than 7 months or both such fine and imprisonment.

(5) All motor bus companies operating lines in this state ~~shall be~~ are liable in damage for all injuries to the person ~~or persons~~ resulting ~~in~~ from the violation of the provisions of ~~said~~ this section."

Section 22. Section 39-4-103, MCA, is amended to read:

"39-4-103. Underground miners and smeltermen. (1) The period of employment of ~~workingmen~~ workers in all underground mines or workings, including railroad or other tunnels, ~~shall be~~ is 8 hours per day, except in cases of emergency ~~where~~ when life and property are in imminent danger.

(2) The period of employment of ~~workingmen~~ workers in smelters, ~~stamp mills~~ stamp mills, sampling works, concentrators, and all other institutions for the reduction of ores and refining of ores or metals ~~shall be~~ is 8 hours per day, except in cases of emergency where life or property is in imminent danger.

(3) Any person ~~or persons~~, ~~body corporate~~ corporation, agent, manager, or employer who ~~shall violate~~ violates any of the provisions of this section ~~shall be~~ is guilty of a

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misdemeanor and upon conviction thereof for each offense be is subject to a fine of not less than $100 or more than $600 or by imprisonment in the county jail for a period of not less than 1 month or more than 7 months or by both such fine and imprisonment."

Section 23. Section 39-4-107, MCA, is amended to read:

"39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours ~~shall constitute~~ constitutes a day's work in all works and undertakings carried on or aided by any municipal, or county government, or the state government, or a first-class school ~~districts~~ district, and on all contracts let by them, and for all janitors, [except in courthouses of sixth- and seventh-class counties], engineers, ~~firemen~~ firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by ~~any~~ such municipal, county, or state ~~governments, school--districts--of--first--class,---and~~ government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal, ~~except in~~ In cases of emergency when life or property is in imminent danger this subsection does not apply.

(2) For firefighters in cities of the first and second

class, a ~~work-week-shall-be-a-period~~ workweek consists of a maximum of 40 hours during a 5-day week.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a 40-hour ~~work--week~~ workweek consisting of 4 consecutive 10-hour days. No employee ~~shall~~ may be required to work in excess of 8 hours in any one ~~work~~ day workday if he prefers not to.

(4) Every person, corporation, stock company, or association of persons who violates any of the provisions of this section ~~shall--be~~ is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment."

Section 24. Section 39-4-108, MCA, is amended to read:

"39-4-108. Railway employees. (1) On all lines of railroads or railways operated in whole or in part within this state, the time of labor of locomotive engineers, locomotive firemen, conductors, trainmen, operators, and agents acting as operators employed in running or operating the locomotive engines or trains on or over such railroads or railways in this state ~~shall~~ may not at any time exceed 12 consecutive hours or ~~to--be--on-duty-for-more-than~~ an

aggregate of 16 hours ~~in--the--aggregate~~ in any 24-hour period. At least 8 hours ~~shall~~ must be allowed them off duty before ~~said~~ engineers, firemen, conductors, trainmen, operators, and agents acting as operators are again ordered or required to go on duty.

(2) Nothing in this section ~~shall~~ may be construed to allow any engineer, fireman, conductor, or trainman to desert his locomotive or train in case of accident, ~~storms~~ storm, ~~wrecks~~ wreck, ~~washouts~~ washout, snow blockade, or any unavoidable delay arising from like causes or to allow ~~said~~ such engineer, fireman, conductor, or trainman to tie up any passenger or mail train between terminals.

(3) The provisions of this section ~~shall~~ do not apply to relief or wreck trains.

(4) Any railroad company or superintendent, train dispatcher, trainmaster, master mechanic, or other railroad or railway official who ~~shall--order~~ orders or ~~require~~ requires any locomotive engineer, locomotive fireman, conductor, trainman, operator, or agent acting as operator to labor contrary to the provisions of this section ~~shall--be deemed~~ is guilty of a misdemeanor and on conviction thereof ~~shall--be--punished~~ is punishable by a fine of not less than $100 or more than $500 or by imprisonment of not less than 30 days or more than 60 days in the county jail.

(5) All railroad or railway corporations operating

lines of railroads or railways in whole or in part in this state ~~shall--be~~ are liable in damages for all injuries to any person ~~or--persons~~ resulting from violations of the provisions of this section."

Section 25. Section 39-4-110, MCA, is amended to read:

"39-4-110. Sugar refineries. (1) A period of not to exceed 8 hours ~~shall--constitute~~ constitutes a day's work for all persons employed in or about sugar refineries, except in a case of emergency when life ~~and~~ or property ~~are~~ is in danger.

(2) The provisions of this section ~~shall~~ do not apply to beet receiving station employees or superintendents, master mechanics, or beet-end, sugar-end, and Steffan house foremen.

(3) Any person, corporation, agent, manager, or employer who ~~shall--violate~~ violates the provisions of this section ~~shall--be~~ is guilty of a misdemeanor and upon conviction thereof ~~shall--be--punished~~ is punishable by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment."

Section 26. Section 39-5-102, MCA, is amended to read:

"39-5-102. Definitions. Unless a different meaning is clearly required by the context, the following words and phrases, as ~~hereinafter~~ used in this chapter, ~~shall~~ have the

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following meanings:

(1) (a) "Employment agency" is synonymous with "agency" and ~~shall mean~~ means any business in which any part of the business's gross or net income is derived from a fee received from applicants and in which any of the following activities are engaged in:

(i) the offering, promising, procuring, or attempting to procure employment for applicants; or

(ii) the giving of information regarding where and from whom employment may be obtained.

(b) In addition, the term "employment agency" ~~shall mean~~ means and ~~include~~ includes any person, bureau, organization, or school which for profit, by advertisement or otherwise, offers as one of its main objects or purposes to procure employment for any person who pays for its services or which collects tuition or charges for service of any nature where the main object of the person paying the same is to secure employment.

(c) The term "employment agency" ~~shall~~ does not include labor union organizations, temporary service contractors, proprietary schools, or the Montana state employment agency.

(2) "Temporary service contractors" ~~shall mean~~ means any person, firm, association, or corporation conducting a business which consists of employing individuals directly

for the purpose of furnishing such individuals on a part-time or temporary basis to others.

(3) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(4) "Applicant", except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(5) "Person" includes an individual, a firm, a corporation, a partnership, or an association.

(6) "Director" ~~shall mean~~ means the commissioner of the department of labor and industry."

Section 27. Section 39-5-202, MCA, is amended to read:

"39-5-202. Application for license or renewal. (1) Every applicant for an employment agency license or a renewal thereof shall file with the director a written application stating the name and address of the applicant, the street and number of the building in which the business of the employment agency is to be conducted, the name of the person who is to have the general management of the office, the name under which the business of the office is to be

carried on, and whether or not the applicant is pecuniarily interested in the business to be carried on under the license~~,~~ ~~shall~~ The application must be signed by the applicant and sworn to before a notary public~~,~~ and ~~shall~~ must identify anyone holding over 20% interest in the agency.

(2) If the applicant is a corporation, the application ~~shall~~ must state the names and addresses of the officers and directors of the corporation and ~~shall~~ must be signed and sworn to by the president and secretary thereof before a notary public.

(3) If the applicant is a partnership, the application ~~shall~~ must also state the names and addresses of all partners therein and ~~shall~~ must be signed and sworn to by all of them before a notary public.

(4) The application ~~shall~~ must also state whether or not the applicant ~~is~~, at the time of making the application or has at any previous time, has been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(5) All applications for employment agency licenses ~~shall~~ must be accompanied by a copy of the form of contract to be used between the agency and the applicant."

Section 28. Section 39-5-403, MCA, is amended to read:

"39-5-403. Referral of violations to prosecuting

attorneys -- restraining actions. The director may refer such evidence as may be available to him concerning violations of this chapter or of any rule adopted hereunder to the attorney general or the ~~prosecuting~~ county attorney of the county wherein the alleged violation arose who may, in his discretion, with or without such a reference, in addition to any other action he might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter."

Section 29. Section 39-5-404, MCA, is amended to read:

"39-5-404. Written assurance of discontinuance. In the enforcement of this chapter, the attorney general ~~and/or any said prosecuting~~ or the county attorney may accept an assurance of discontinuance from any person deemed in violation of any provisions of this chapter. Any such assurance shall be in writing and shall be filed with and subject to the approval of the ~~superior~~ district court of the county in which the alleged violator resides or has his principal place of business."

Section 30. Section 39-5-405, MCA, is amended to read:

"39-5-405. Civil penalty for violating court order. Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more

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than $2,000. For the purpose of this section, the court issuing any injunction shall retain continuing jurisdiction and in such cases the attorney general ~~and/or~~ or the ~~prosecuting~~ county attorney acting in the name of the state may petition for the recovery of civil penalties."

Section 31. Section 39-6-106, MCA, is amended to read:

"39-6-106. Standards for apprenticeship agreements. Standards for apprenticeship agreements are as follows:

(1) a statement of the trade or craft to be taught and the required hours for completion of apprenticeship, which ~~shall~~ must be not less than 4,000 hours of reasonably continuous employment;

(2) a statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;

(3) a statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction ~~shall~~ must be not less than 144 hours per year;

(4) a statement that apprentices ~~shall~~ must be not less than 16 years of age;

(5) a statement of the progressively increasing scale of wages to be paid the apprentice;

(6) provision for a period of probation during which the department of labor and industry~~, when authorized by the~~

~~department, shall be directed to~~ must terminate an apprenticeship agreement at the request in writing of any party thereto. After the probationary period, the department~~, when authorized by the department, shall be empowered to~~ may terminate the registration of an apprentice upon agreement of the parties.

(7) provision that the services of the department may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure;

(8) provision that if an employer is unable to fulfill his obligation under the apprenticeship agreement he may transfer such obligation to another employer;

(9) such additional standards as may be prescribed in accordance with the provisions of this chapter."

Section 32. Section 39-31-103, MCA, is amended to read:

"39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any

representative or agent designated by the public employer to act in its interest in dealing with public employees.

(2) "Public employee" means a person employed by a public employer in any capacity, except an elected ~~officials~~ official, ~~persons~~ a person directly appointed by the governor, a supervisory ~~employees~~ employee and management ~~officials~~ official, as defined in subsections (3) and (4) below, or ~~members or~~ member of any state board or commission who ~~serve~~ serves the state intermittently, school district ~~clerks~~ clerk and school ~~administrators~~ administrator, registered professional ~~nurses~~ nurse performing service for health care facilities, professional ~~engineers~~ engineer and ~~engineers-in-training~~ engineer-in-training, and includes any individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.

(3) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(4) "Management ~~officials~~ official" means ~~representatives~~ a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.

(5) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(6) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(7) "Board" means the board of personnel appeals provided for in 2-15-1705.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402.

(10) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in

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negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(11) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board."

Section 33. Section 39-31-208, MCA, is amended to read:

"39-31-208. Representation election at direction of board. (1) If the board or an agent of the board, in the hearing provided for in 39-31-207, finds that there is a question of representation, it shall direct an election by secret ballot to determine whether and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof.

(2) Only those labor organizations which have been designated by more than 10% of the employees in the unit found to be appropriate shall be placed on the ballot.

(3) The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election.

(4) Unless the majority vote is for no representation by a labor organization and in any election where none of

the choices for a representative on the ballot receives a majority, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(5) A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative."

Section 34. Section 39-31-309, MCA, is amended to read:

"39-31-309. Factfinding proceedings. (1) The ~~fact finder~~ factfinder shall immediately establish dates and place of hearings.

(2) The public employer and the exclusive representative ~~shall--be~~ are the only proper parties to factfinding proceedings.

(3) Upon request of either party of or the ~~fact-finder~~ factfinder, the board shall issue subpoenas for hearings conducted by the ~~fact--finder~~ factfinder. The ~~fact-finder~~ factfinder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the ~~day~~ date of appointment, the ~~fact--finder~~ factfinder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the public employer and the exclusive

representative. The ~~fact--finder~~ factfinder may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the report ~~shall~~ must be made public.

(5) The cost of factfinding proceedings ~~shall~~ must be equally borne by the board and the parties concerned.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the ~~fact--finder~~ factfinder from endeavoring to mediate the dispute in which he has been selected or appointed as ~~fact finder~~ factfinder."

Section 35. Section 39-31-401, MCA, is amended to read:

"39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201, and 39-31-204 ~~through 39-31-206, or 39-31-303~~;

(2) dominate, interfere, or assist in the formation or administration of any labor organization; ~~However~~ however, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) discriminate in regard to hire or tenure of

employment or any term or condition of employment in order to encourage or discourage membership in any labor organization; ~~However~~ however, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member ~~shall be required, as a condition of employment, to~~ must have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(4) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative."

Section 36. Section 39-31-403, MCA, is amended to read:

"39-31-403. Remedies for unfair labor practices. Violations of the provisions of 39-31-401 or 39-31-402 are unfair labor practices remediable by the board ~~in the following manner~~ pursuant to this part."

Section 37. Section 39-51-201, MCA, is amended to read:

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"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) The word "administrator" refers to a person appointed by the commissioner of labor and industry to direct and administer the unemployment compensation laws and federal laws falling within the administrator's jurisdiction.

(2) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(3) "Annual total payroll" means the total of the 4 quarters of total payrolls of an employer preceding the computation date as fixed herein.

(4) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(5) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(6) "Benefit year", with respect to any individual,

means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim and thereafter the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year. If such filing ~~shall result~~ results in an overlapping of benefit years, the new benefit year ~~shall begin upon~~ begins on the first Sunday following the expiration of his ~~last~~ preceding benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period ~~shall be that~~ is the period applicable under the unemployment law of the paying state.

(7) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(8) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(9) "Contributions" means the money payments to the state unemployment compensation fund required by this chapter.

(10) "Division" means the employment security division of the department of labor and industry provided for in Title 2, chapter 15, part 17.

(11) "Employing unit" means any individual or ~~type of~~ organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. ~~and all~~ All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state ~~shall be deemed~~ are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit ~~shall be~~ is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(12) "Employment office" means a free public employment office or branch thereof operated by this state or

maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the division may approve.

(13) "Fund" means the unemployment compensation fund established by this chapter to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this chapter shall be paid.

(14) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(15) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(16) (a) "Institution of higher education", for the purposes of this part, means an ~~education~~ educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a

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program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of ~~post-graduate~~ postgraduate or ~~post-doctoral~~ postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(17) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(18) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and

determined in accordance with rules prescribed by the division.

(b) The term "wages" ~~shall~~ does not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from ~~welfare~~ public assistance funds for services performed at the direction and request of such county welfare office.

(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(21) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment.

~~(22) The word "division" throughout the unemployment statutes refers to a unit of the Montana state department of labor and industry.~~

~~(23) The words "board of labor appeals" used in this chapter mean three persons appointed by the governor who are not public employees but who are attached to the Montana state department of labor and industry. The function of~~

~~said board is to act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws.~~"

Section 38. Section 39-51-202, MCA, is amended to read:

"39-51-202. Employer defined. "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year exceeds the sum of $500;

(2) any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

(3) any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

(4) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be

taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

(5) any employing unit which, having become an employer under subsection (1), (2), (3), or (4) has not, under 39-51-1101 ~~or 39-51-1102~~, ceased to be an employer subject to this chapter; or

(6) for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter."

Section 39. Section 39-51-203, MCA, is amended to read:

"39-51-203. Employment defined. (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" ~~shall include~~ includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some

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of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service ~~shall be deemed~~ is considered to be localized within a state if:

(i) the service is performed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government ~~shall be deemed~~ is considered to be employment subject to this chapter if the individual performing such services is a resident of this state and the division approves the election of the

employing unit for whom such services are performed that the entire service of such individual ~~shall be deemed~~ is considered to be employment subject to this chapter.

(4) ~~Services~~ Service performed by an individual for wages ~~shall be deemed~~ is considered to be employment subject to this chapter unless and until it is shown to the satisfaction of the division that:

(a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact;

(b) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(c) such individual is customarily engaged in an independently established trade, occupation, profession, or business.

(5) The term "employment" ~~shall include~~ includes service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. ~~Effective after July 1, 1975, the~~ The term "employment" ~~shall include~~ includes

service performed after July 1, 1975, by all individuals, including without limitations those individuals who work for the state of Montana, its university, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" ~~shall--include~~ includes service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" ~~shall-include~~ includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, after December 31, 1971, in the employ of an American employer, other than service which is ~~deemed~~ considered employment under the provisions of subsection (2) of this section or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection ~~is~~ are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(8) Agricultural labor exempted under 39-51-204 ~~shall~~ be is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays

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~~$40,000~~ $20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs ~~20~~ 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has agricultural employment, all employees are covered under the chapter regardless of the amount of money expended for agricultural purposes.

(9) Domestic service exempted under 39-51-204(1)(b) ~~shall--be~~ is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has domestic employment, all employees are covered under the chapter regardless of the amount of money expended for domestic purposes."

Section 40. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" ~~shall~~ does not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority,

except as provided in 39-51-203(9);

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of 18 in the employ of his father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress, provided that the division ~~is--hereby--authorized--and-directed-to~~ must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ~~10-days after--publication--thereof~~ in the manner prescribed in

~~39-51-302--for--general--rules~~ the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such act of congress or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salesmen paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to

such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital.

(2) "Employment" ~~shall~~ does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church

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or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in the employ of a school which is not an institution of higher education, prior to December 31, 1977;

(d) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(f) for a state prison or other state correctional or custodial institution by an inmate of that institution."

Section 41. Section 39-51-302, MCA, is amended to read:

"39-51-302. ~~Regulations--and-general-and-special-rules~~

~~Adoption-of-rules.~~ ~~General-and-special-rules-may-be-adopted,-amended,-or-rescinded-by--the--division--only--after--public-hearing--or-opportunity-to-be-heard-thereon,-of-which-proper-notice-has-been-given.-General-rules-shall-become--effective-10--days--after--filing--with--the--secretary--of--state-and-publication-in-one-or-more-newspapers-of-general-circulation-in-this-state.-Special-rules-shall-become-effective-10--days-after--notification--to-or-mailing-to-the-last-known-address-of-the-individuals-or-concerns-affected-thereby.-Regulations~~ Rules may be adopted, amended, or ~~rescinded~~ repealed by the division ~~and-shall-become-effective-in-the-manner-and-at-the-time--prescribed--by--law~~ pursuant to the Montana Administrative Procedure Act."

Section 42. Section 39-51-304, MCA, is amended to read:

"39-51-304. Personnel. (1) ~~Subject-to-other-provisions-of--this--chapter~~ Except as otherwise provided, the division is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this chapter. The division may delegate to any such persons such power and authority as it ~~deems~~ considers reasonable and proper for the effective administration of this chapter and may in its discretion bond any person handling money or

signing checks hereunder.

~~(2)--The-division-shall-classify-positions--under--this chapter--and--shall--establish--salary-schedules-and-minimum personnel-standards-for-the--positions--so--classified.--The division--shall--provide--for-the-holding-of-examinations-to determine-the-qualifications-of-applicants-for-the-positions so-classified-and,-except-for-temporary-appointments-of--not to--exceed--6--months--in--duration,-such-personnel-shall-be appointed--on--the--basis--of--efficiency--and--fitness---as determined-in-such-examinations.~~

~~(3)~~(2) No person who is an officer or committee member of any political party organization or who holds or is a candidate for any public office ~~shall~~ may be appointed or employed under this chapter.

~~(4)~~(3) The division shall ~~establish-and-enforce-fair and-reasonable-regulations-for-appointments,-promotions,-and demotions-based-upon-ratings-of-efficiency-and--fitness--and for--terminations--for--cause~~ hire in accordance with merit system principles adopted by the merit system council."

Section 43. Section 39-51-309, MCA, is amended to read:

"39-51-309. Representation of division and state in court. (1) In any civil action to enforce the provisions of this chapter the division and the state may be represented by any qualified attorney who is employed by the division

and is designated by it for this purpose or, at the division's or board's request, by the attorney general.

(2) All criminal actions for violation of any provision of this chapter or of any rules issued pursuant thereto shall be prosecuted by the attorney general of the state or, at his request and under his direction, by the ~~prosecuting~~ county attorney of the county wherein the crime was committed."

Section 44. Section 39-51-401, MCA, is amended to read:

"39-51-401. Unemployment compensation account -- establishment and control. There is hereby established separate and apart from all public money or funds of this state an account in the agency fund known as the unemployment compensation account, which shall be administered by the division exclusively for the purposes of this chapter. Any reference to the unemployment compensation fund in this code ~~shall--be--taken--to--mean~~ means the unemployment compensation account in the agency fund. All money in the account shall be mingled and undivided. This account shall consist of:

(1) all contributions collected under this chapter, ~~inclusive---of---voluntary---contributions--as--provided--in [87-109(c)(4), R.C.M. 1947],~~ and payments made in lieu of contributions as provided in ~~39-51-1106~~ subsections (2) and

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(3) of 39-51-1106;

(2) interest earned upon any money in the account;

(3) any property or securities acquired through the use of money belonging to the account;

(4) all earnings of such property or securities; and

(5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended."

Section 45. Section 39-51-402, MCA, is amended to read:

"39-51-402. Unemployment compensation account -- state treasurer ex officio custodian -- accounts and deposits. (1) The state treasurer ~~shall be~~ is the ex officio the treasurer and custodian of the unemployment compensation account and shall administer such account in accordance with the directions of the division and shall issue his warrants upon it in accordance with such regulations as the division shall prescribe. He shall maintain within the account three separate accounts:

(a) a clearing account;

(b) an unemployment trust fund account; and

(c) a benefit account.

(2) All money payable to the unemployment compensation account, upon receipt thereof by the division, ~~shall~~ must be forwarded to the treasurer who shall immediately deposit

them it in the clearing account. Refunds payable pursuant to ~~39-51-1104, 39-51-1105,~~ 39-51-1110, ~~39-51-1301, or 39-51-1303 through 39-51-1306~~ may be paid from the clearing account upon warrants issued by the treasurer under the direction of the division. After clearance thereof, all other money in the clearing account ~~shall~~ must be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(3) The benefit account ~~shall consist~~ consists of all money requisitioned for the payment of benefits from this state's account in the unemployment trust fund.

(4) Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the division, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium ~~shall~~ may be paid out of the unemployment compensation account.

(5) The treasurer shall give a separate bond

conditioned upon the faithful performance of his duties as custodian of the unemployment compensation account in an amount fixed by the division and in a form prescribed by law or approved by the attorney general. Premiums for ~~said~~ the bond shall be paid from the unemployment compensation administration account."

Section 46. Section 39-51-1109, MCA, is amended to read:

"39-51-1109. Contribution appeals. Any person aggrieved by any decision, determination, or redetermination of the division involving contribution liability, contribution rate, application for refund, or the charging of benefit payments to employers making payment in lieu of contributions is entitled to a review by the division or its authorized representative, hereinafter referred to as a deputy. The decision of the deputy ~~shall be deemed to be~~ is considered the decision of the division. The division or the deputy conducting the review may refer the matter to an appeals referee, may decide the application for review on the basis of such facts and information as may be obtained, or may hear argument to secure further fats. After such review, notice of the decision ~~shall~~ must be given to the employing unit. Such decision made pursuant to such review ~~shall be deemed to be~~ is considered the final decision of the division unless the employing unit or any other such

interested party, within 5 calendar days after delivery of such notification or within 7 calendar days after such notification was mailed to his ~~last known~~ last-known address, files an appeal from this decision. Such appeal will be referred to an appeals referee who shall make his decisions with respect thereto in accordance with the procedure prescribed in ~~[87-107(c)]~~ 39-51-2403."

Section 47. Section 39-51-1201, MCA, is amended to read:

"39-51-1201. Experience rating and classification of employers. (1) The division shall for each calendar year classify employers in accordance with their actual contributions and unemployment experience and shall determine for each employer the experience rate which shall apply to him throughout the calendar year. The division shall apply such form of classification or experience rating system which is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of employment.

(2) In making such classification, the division shall take into account each of the following factors relating to the unemployment hazard shown by each employer on the basis of:

(a) number of years the employer has paid contributions;

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(b) average quarterly percentage declines in total payrolls for the last 3 fiscal years ending June 30; and

(c) average annual net percentage declines in total payrolls for the last 3 fiscal years ending June 30, the computation date.

(3) Wages shall be adjusted in the determination of the annual and quarterly decrease percentages of any employer's payroll in whose establishment there was in any year in the qualifying period of such employer a stoppage of work due to a strike which caused a decrease in such employer's payroll of such magnitude that his actual quarterly and annual payroll caused by such a decrease ~~or decreases~~ when used with other annual and quarterly payroll decreases, if any, in his qualifying period would cause an increase in such employer's contribution rate. An employer's adjusted quarterly payroll for that quarter in which such stoppage of work existed shall be determined by multiplying each such payroll or adjusted payroll for the quarter immediately preceding the quarter in which such stoppage of work existed by the average quarterly variation ratio. The average quarterly variation ratio shall be computed by:

(a) dividing the payroll or, if adjusted, the adjusted payroll for that quarter in each of the prior years of an employer's qualifying period which corresponds to the

respective quarter in which a stoppage of work due to a strike existed by the payroll or adjusted payroll for the respective quarter immediately preceding such corresponding quarter; and

(b) totaling the ratio thus obtained and dividing by the number of such ratios."

Section 48. Section 39-51-1303, MCA, is amended to read:

"39-51-1303. Collection of unpaid contributions by civil action. (1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due ~~shall~~ must be collected by civil action in the name of the division, Montana department of labor and industry, and the employer adjudged in default shall pay the costs of such action.

(2) Civil actions brought under this section to collect contributions or interest thereon from an employer ~~shall~~ must be heard by the court at the earliest possible date and ~~shall~~ must be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law of this state.

(3) ~~Action~~ An action for the collection of contributions due ~~shall~~ must be brought within 5 years after the due date of such contributions~~, otherwise to be~~ or be

barred ~~as provided in [93-2604]~~."

Section 49. Section 39-51-2104, MCA, is amended to read:

"39-51-2104. General benefit eligibility conditions. An unemployed individual ~~shall be~~ is eligible to receive benefits for any week of total unemployment within his benefit year only if the division finds that:

(1) he has registered for work at and thereafter has continued to report at an employment office in accordance with such regulation as the division may prescribe, except that the division may, by regulation, prescribe that ~~such types of~~ in cases ~~or situations with respect to~~ in which it finds ~~that compliance with~~ such requirements ~~would be~~ oppressive, or ~~would be~~ inconsistent with the purposes of this chapter, ~~provide for registration~~ an unemployed individual may register and ~~reporting~~ report for work by mail or through other governmental agencies;

(2) he has made a claim for benefits in accordance with the provisions of 39-51-2401;

(3) he is able to work and is available for work and is seeking work; provided, however, that no claimant ~~shall be~~ is considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has

been offered to such claimant after the beginning of such illness or disability;

(4) prior to any week for which he claims benefits he has been totally unemployed for a waiting period of 1 week. However, if claimant's benefit year expires during a period of compensable unemployment, claimant will continue to receive weekly benefits in a new benefit year, if otherwise eligible, without interruption to serve the waiting week for the new benefit year but will thereafter be required to serve the waiting week before receiving benefits during subsequent unemployment in the new benefit year. No week ~~shall be~~ is counted as a week of total unemployment for the purposes of this subsection:

(a) if benefits have been paid with respect thereto;

(b) unless the individual was eligible for benefits with respect thereto;

(c) unless it occurs within the benefit year of the claimant;

(d) unless it occurs after benefits first could become payable to any individual under this chapter."

Section 50. Section 39-51-2108, MCA, is amended to read:

"39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations. Benefits based on service in employment defined in ~~39-51-203~~

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subsections (5) and (6) of 39-51-203 and ~~39-51-204~~ subsections (2) and (3) ~~and [87-110(d), R.C.M. 1947] shall~~ be of 39-51-204 are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research, or principal administrative capacity for an educational institution ~~shall~~ may not be paid to an individual for any week of unemployment which begins during the period between 2 successive academic years or during a similar period between 2 regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract to perform services in any such capacity for any such educational institution for both such academic years or both such terms."

Section 51. Section 39-51-2304, MCA, is amended to read:

"39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) Effective April 1, 1977, an individual ~~shall be~~ is disqualified for benefits if he ~~failed~~ fails without good cause either to apply for available and suitable work when so directed by the employment office or the division or to accept suitable work offered to him which he is physically able and mentally

qualified to perform or to return to his customary self-employment, if any, when so directed by the division. Such disqualification ~~shall continue~~ continues for the week in which such failure ~~occurred~~ occurs and until he the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of his weekly benefit amount in 6 separate weeks subsequent to the date the act causing the disqualification occurred, with 6 weeks' reduction in benefit duration, as determined by the division, provided he has not left this work under disqualifying circumstances.

(2) In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(3) Notwithstanding any other provisions of this chapter, no work ~~shall~~ may be ~~deemed~~ considered suitable and benefits ~~shall~~ may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization."

Section 52. Section 39-51-3206, MCA, is amended to read:

"39-51-3206. Liability for wrongful or improper receipt of benefits. Any person who, by reason of the nondisclosure or misrepresentation by him or by another of a material fact, irrespective of whether such nondisclosure or misrepresentation was known or fraudulent, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case or while he was disqualified from receiving benefits shall, in the discretion of the division, either be liable to have such sum deducted from any future benefits payable to him under this chapter or shall be liable to repay to the division for the unemployment compensation fund a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this chapter for the collection of past due

contributions. ~~Action~~ An action for collection of overpaid benefits ~~shall~~ must be brought within 5 years after the date of such overpayment~~--otherwise--to--be~~ or be barred ~~as provided in [93-2604]~~."

Section 53. Section 39-71-101, MCA, is amended to read:

"39-71-101. Short title. This chapter ~~shall be known~~ and may be cited as ~~the Workmen's Compensation--Act--or~~ the Workers' Compensation Act."

Section 54. Section 39-71-102, MCA, is amended to read:

"39-71-102. Reference to plans. Whenever compensation plan No. 1, 2, or 3 ~~or the safety provisions of this chapter shall--be~~ is referred to, such reference ~~shall~~ also ~~be held to include~~ includes all other sections which are applicable to the subject matter of such reference."

Section 55. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter ~~shall~~ have the following meanings ~~hereinafter defined~~:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the division of employment security of the Montana department of labor and

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industry. It is established at the nearest whole dollar number and ~~shall~~ must be adopted by the division of workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving wife or husband;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 25 years who is a full-time student in an accredited school;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury. However ~~(however~~, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists~~)~~.

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer. Any person hauling or assisting in hauling

of sugar beets or grains, in case of emergency, ~~shall be~~ is considered engaged in casual employment.

(4) "Child" ~~shall include~~ includes a posthumous child, a dependent stepchild, a child legally adopted prior to the injury, and an illegitimate child legitimized prior to the injury.

(5) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(6) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(7) "Husband" or "widower" means only a husband or widower living with or legally entitled to be supported by the deceased at the time of her injury.

(8) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the industrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in ~~39-71-501 through 39-71-507~~ part 5 of this chapter.

(9) "Invalid" means one who is physically or mentally incapacitated.

(10) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

(11) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the division, as the case may actually be on December 31 of such current year.

(12) "Permanent partial disability" means a condition resulting from injury as defined in this chapter that results in the actual loss of earnings or earning capability less than total that exists after the injured ~~workmen~~ worker is as far restored as the permanent character of the injuries will permit.

(13) "Permanent total disability" means a condition resulting from injury as defined in this chapter that results in the loss of actual earnings or earning capability that exists after the injured ~~workmen~~ worker is as far restored as the permanent character of the injuries will permit and which results in the ~~workmen~~ worker having no reasonable prospect of finding regular employment of any kind in the normal labor market.

(14) The term "physician" ~~shall--include~~ includes "surgeon" and in either case ~~shall--mean~~ means one authorized by law to practice his profession in this state.

(15) "The plant of the employer" ~~shall--include~~ includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(16) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(17) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(18) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished ~~and--shall--embrace--all--safety--devices--and safeguards-provided-or-prescribed-by-the--safety--provisions of-the-chapter-for-the-purpose-of-mitigating-or-preventing-a specific-danger~~.

(19) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that

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results in total loss of wages and exists until the injured ~~workmen~~ worker is as far restored as the permanent character of the injuries will permit.

(20) "Wages" means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week, and overtime is not to be considered. Sick leave benefits accrued by employees of public corporations, as defined by subsection (16) of this section, are considered wages.

(21) "Wife" or "widow" means only a wife or widow living with or legally entitled to be supported by the deceased at the time of the injury.

(22) "Year", unless otherwise specified, means calendar year."

Section 56. Section 39-71-302, MCA, is amended to read:

"39-71-302. What included in computing payroll. In computing the payroll, the entire compensation received by every ~~workmen~~ worker employed under this chapter ~~shall be~~ is included, whether ~~it be~~ in the form of salary, wage, piecework, or otherwise and whether payable in money, board, or otherwise."

Section 57. Section 39-71-304, MCA, is amended to read:

"39-71-304. Books, records, and payrolls to be open to

inspection — penalty for refusal. The books, records, and payrolls of the employer pertinent to the administration of this chapter ~~shall~~ must always be open to inspection by the division or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of ~~men~~ persons employed, and such other information as may be necessary for the division and its management under this chapter. Refusal on the part of the employer to submit said books, records, and payrolls for such inspection shall subject the offending employer to a penalty of $100 for each offense, to be collected by civil action in the name of the state and paid into the state treasury."

Section 58. Section 39-71-306, MCA, is amended to read:

"39-71-306. Plan one employers and plan two insurers to file duplicate receipts paid for injuries and statements of medical expenditures. Every employer coming under the provisions of compensation plan No. 1 and every insurer coming under the provisions of compensation plan No. 2 shall, on or before the 15th day of each and every month, file with the division:

(1) duplicate receipts for all payments made during the previous month to injured workers or their beneficiaries or dependents; and

(2) statements showing the amounts expended during the

previous month for medical, surgical, and hospital services for injured workers and for the burial of ~~injured~~ deceased workers."

Section 59. Section 39-71-309, MCA, is amended to read:

"39-71-309. Hospitals to submit schedule of fees and charges -- effective period of schedule -- when to be submitted. All hospitals must submit to the division a schedule of fees and charges for treatment of injured workmen workers to be in effect for at least a 12-month period unless the division and the hospital agree to interim amendments of the schedule. The schedule must be submitted at least 30 days prior to its effective date and ~~shall~~ may not exceed the charges prevailing in the hospital for similar treatment of private patients."

Section 60. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every

employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under the this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3);

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership;

(e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(f) any person performing services in return for aid or sustenance only;

(g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter."

Section 61. Section 39-71-406, MCA, is amended to read:

"39-71-406. Deduction from wages of any part of premium a misdemeanor -- hospital contributions not

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prohibited. It ~~shall be~~ is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of his ~~workmen or any of them~~ workers, and the making or attempt to make any such deduction ~~shall be~~ is a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this chapter provided."

Section 62. Section 39-71-410, MCA, is amended to read:

"39-71-410. Employees bound by plan adopted by employer -- election not to be bound by corporate officers. (1) Every employee whose employer is bound by the provisions of this chapter ~~shall become~~ is subject to and be bound by the provisions of that plan of compensation ~~which shall have been~~ adopted by his employer, except that pursuant to such rules as the division shall from time to time promulgate and subject in all cases to the review of the division, officers of private corporations may elect not to be bound as employees under the this chapter by a written notice in the form provided by the division, served in the following manner:

(a) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering ~~said~~ the notice to the board of directors of the employer;

(b) if the employer has elected to be bound by the provisions of compensation plan No. 2, by delivering ~~said~~ the notice to the board of directors of the employer or the insurer;

(c) if the employer has elected to be bound or is bound by the provisions of compensation plan No. 3, by delivering ~~said~~ the notice to the division.

(2) The appointment or election of an officer of a corporation for the purpose of excluding an employee from coverage under ~~the~~ this chapter ~~shall~~ does not entitle such officer to elect not to be bound as an employee under the this chapter. In any case, the notice ~~shall~~ must be signed by the officer under oath or equivalent affirmation and is subject to the penalties for false swearing.

(3) The division shall review any election by officers of private ~~corporation's election~~ corporations not to be bound as an employee to assure compliance with this chapter."

Section 63. Section 39-71-411, MCA, is amended to read:

"39-71-411. Provisions of chapter exclusive remedy -- nonliability of insured employer. For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under ~~the~~ this chapter, the provisions of ~~the~~ this chapter are exclusive. Except as

provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death of or personal injury to ~~any--employees~~ an employee covered by the Workers' Compensation Act. The Workers' Compensation Act binds the employee himself, and in case of death binds his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer and the servants and employees of such employer and those conducting his business during liquidation, bankruptcy, or insolvency."

Section 64. Section 39-71-501, MCA, is amended to read:

"39-71-501. Definition of uninsured employer. For the purposes of ~~39-71-501-through-39-71-507~~ this part, ~~the-words~~ "uninsured employer" ~~mean~~ means an employer who has not properly complied with the provisions of 39-71-401."

Section 65. Section 39-71-506, MCA, is amended to read:

"39-71-506. Collection of payments from uninsured employer by suit. If, upon demand of the division, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the sums may be collected by the division through

suit. The division may settle through compromise with an uninsured employer the amount due the fund under ~~39-71-501 through-39-71-507~~ 39-71-504."

Section 66. Section 39-71-510, MCA, is amended to read:

"39-71-510. Limitation on benefit entitlement under fund. Notwithstanding the provisions of ~~39-71-402,~~ 39-71-407, ~~and--39-71-501--through-39-71-507~~ 39-71-502, and 39-71-503, injured employees or an employee's beneficiaries who elect to receive benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund ~~shall~~ must be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future."

Section 67. Section 39-71-602, MCA, is amended to read:

"39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed. No limitation of time as provided in 39-71-601 or in this chapter, known as the Workers' Compensation Act, shall run as against any injured ~~workmen~~ worker who is mentally

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incompetent and without a guardian or an injured minor under 18 years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitations as provided for in 39-71-601 shall begin to run on the date of appointment of such guardian or when such minor arrives at ~~the age of~~ 18 years of age, whichever date ~~may be the~~ is earlier."

Section 68. Section 39-71-603, MCA, is amended to read:

"39-71-603. Notice of ~~claims~~ claim for injuries other than death to be submitted within sixty days -- exception -- actual notice. No ~~claims~~ claim to recover compensation under this ~~[act]~~ chapter for injuries not resulting in death ~~shall~~ may be maintained unless, within 60 days after the occurrence of the accident which is claimed to have caused the injury, notice in writing stating the name and address of the person injured, the time and place where the accident occurred, and the nature of the injury and signed by the person injured or someone in his behalf ~~shall be~~ is served upon the employer or the insurer, except as otherwise provided in 39-71-602. However, actual knowledge of such accident and injury on the part of such employer or his managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the

injury ~~shall be~~ is equivalent to such service."

Section 69. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death. (1) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased, as the case may be, ~~shall receive~~ is entitled to the same compensation as though the death occurred immediately following the injury, but the period during which the death benefit ~~shall be~~ is paid shall be reduced by the period during or for which compensation was paid for the injury.

(2) To beneficiaries as defined in subsections (2)(a) through (2)(d) of 39-71-116, weekly compensation benefits for injury causing death ~~shall be~~ are computed at 66 2/3% of the decedent's wages. The maximum weekly compensation benefits ~~shall~~ may not exceed the state's average weekly wage. The minimum weekly compensation for death ~~shall be~~ 50% of the state's average weekly wage, but in no event ~~shall~~ may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in subsections (2)(e) and (2)(f) of 39-71-116, weekly benefits ~~shall~~ must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation ~~shall~~ may not exceed the state's

average weekly wage.

(4) If the decedent leaves no beneficiary as defined in 39-71-116(2), a lump-sum payment of $3,000 ~~shall~~ must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies ~~or if--the--widow--or--widower--remarries~~, the right of such beneficiary ~~or--widow--or--widower~~ to compensation under this chapter ~~shall--cease~~ ceases. Death benefits ~~shall~~ must be paid to a widow or widower for life or until remarriage, and in the event of remarriage, 2 years' benefits ~~shall~~ must be paid in a lump sum to the widow or widower.

(6) In all cases, benefits ~~shall~~ must be paid to beneficiaries, as defined in 39-71-116(2)."

Section 70. Section 39-71-738, MCA, is amended to read:

"39-71-738. Adjustment of compensation in case of further injuries. Should a further accident occur to a ~~workman~~ worker who is already receiving compensation hereunder or who has been previously the recipient of a payment ~~or---payments~~ under this chapter, his further compensation ~~shall--be~~ is adjusted according to the other provisions of this chapter and with regard to his past receipt of compensation."

Section 71. Section 39-71-739, MCA, is amended to read:

"39-71-739. Compensation in case of changes in degree of injury. If aggravation, diminution, or termination of disability takes place or ~~be~~ is discovered after the rate of compensation ~~shall--have--been~~ is established or compensation is terminated in any case where the maximum payments for disabilities as provided in this chapter ~~have~~ are not been reached, adjustments may be made to meet such changed conditions by increasing, diminishing, or terminating compensation payments in accordance with the provisions of this chapter."

Section 72. Section 39-71-801, MCA, is amended to read:

"39-71-801. Occupational deafness compensated as provided in part. Regardless of other definitions of injury and time limitations imposed by this ~~[act]~~ chapter, there ~~shall--be~~ compensation is awarded for occupational deafness as provided in this part."

Section 73. Section 39-71-807, MCA, is amended to read:

"39-71-807. Compensation for wage loss where employee transferred due to occupational deafness. An employee who because of occupational deafness is transferred by his employer to other employment and thereby sustains actual wage loss ~~shall~~ must be compensated at the rate provided in 39-71-703, not exceeding $3,500 in the aggregate from all

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employers. "Time of injury", "incurred such injury", or "date of injury" in such case ~~shall be~~ is the date of wage loss."

Section 74. Section 39-71-813, MCA, is amended to read:

"39-71-813. Limitation provisions applicable -- when provisions begin to run. The limitation provisions in this ~~[act] shall~~ chapter control claims arising under this part. Such provisions ~~shall~~ run from the first date upon which claim may be filed or from the date of subsequent death, provided that no claim ~~shall~~ may accrue to any dependent unless an award has been issued or liability admitted."

Section 75. Section 39-71-901, MCA, is amended to read:

"39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Vocationally handicapped" means a person who has a medically certifiable permanent physical impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

(2) "Certifying agency" means the ~~section of rehabilitation,~~ division of workers' compensation.

(3) "Certificate" means documentation issued by the

certifying agency to an individual who is vocationally handicapped.

(4) "Fund" means the subsequent injury fund."

Section 76. Section 39-71-902, MCA, is amended to read:

"39-71-902. Fund to receive payment from insurer for each death under chapter -- assessment of insurers. (1) In every case of the death of an employee under this ~~[act]~~ chapter, the insurer shall pay to the fund the sum of $1,000. In addition, the division may assess every insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment ~~shall~~ must be transmitted annually to the subsequent injury fund by the employer or insurer.

(2) When, in the judgment of the administrator, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities, the administrator may at his discretion suspend or reduce further collection of assessments for a period of time determined by the administrator."

Section 77. Section 39-71-903, MCA, is amended to read:

"39-71-903. Procedure and practice. When a vocationally handicapped person receives a personal injury, the procedure and practice provided in this ~~[act]~~ chapter

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applies to all proceedings under this part, except where specifically otherwise provided herein."

Section 78. Section 39-71-907, MCA, is amended to read:

"39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter -- employer liability for compensation limited. A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and resulting in death or disability ~~shall~~ must be paid compensation in the manner and to the extent provided in this ~~[act]~~ chapter or, in case of his death resulting from such injury, the compensation ~~shall~~ must be paid to his beneficiaries or dependents. The liability of the employer for payment of compensation, for furnished medical care, and burial as provided in this ~~[act]--shall be~~ chapter is limited to those benefits occurring during the period of 104 weeks after the date of injury. Thereafter, all compensation and the cost of all medical care and burial ~~shall be~~ is the liability of the fund."

Section 79. Section 39-71-908, MCA, is amended to read:

"39-71-908. Notification of fund of its potential liability under part -- review by fund. Not less than 90 or more than 150 days before the expiration of 104 weeks after

the date of injury, the employer, carrier, or the industrial insurance fund, as the case may be, shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may review, at reasonable times, such information as the employer, carrier, or industrial insurance fund as has regarding the accident and the nature and extent of the injury and disability."

Section 80. Section 39-71-910, MCA, is amended to read:

"39-71-910. Procedure for resolving disputes as to liability under part. (1) If an employee was employed or retained in employment under the provisions of this part and a dispute or controversy arises as to payment of benefits or the liability therefor, the division shall hold a hearing and resolve all disputes. On motion made in writing by the employer, carrier, or industrial insurance fund, the administrator shall join the fund as a party defendant.

(2) The division, within 5 days of the entry of an order joining the fund as a party defendant, shall give the fund written notice thereof not less than 20 days before the date of hearing and shall include the name of the employee, and the employer, and the date of the alleged injury or disability. The fund named as a defendant shall have 10 days after the date of notification to file objections to being

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named as a party defendant. On the date of the hearing at which the liability of the parties is determined, the hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(3) At the time of the hearing, the employer and fund may appear, cross-examine witnesses, give evidence, and defend both on the issue of liability of the employer to the employee and on the issue of the liability of the fund.

(4) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability of the employer and the fund."

Section 81. Section 39-71-1001, MCA, is amended to read:

"39-71-1001. Referral of disabled workers to department of social and rehabilitation services for vocational rehabilitation. The division shall refer to the department of social and rehabilitation services workers who have become permanently disabled as the result of injuries sustained within the scope and course of employment by an employer enrolled under the Workers' Compensation Act ~~of the state of Montana~~ and who, in the opinion of the division, can be vocationally rehabilitated. The department of social

and rehabilitation services shall provide for the vocational rehabilitation of the injured workers under the provisions of ~~[Title 41, chapter 8, R.C.M. 1947]~~ Title 53, chapter 7, parts 1 and 2."

Section 82. Section 39-71-1003, MCA, is amended to read:

"39-71-1003. Eligibility for benefits under chapter not affected -- other expenses payable. The eligibility of any injured ~~workman~~ worker to receive other benefits under the Workers' Compensation Act ~~shall~~ is in no way be affected by his entrance upon a course of vocational rehabilitation as herein provided, but he may be paid, in addition thereto, upon the certification of the ~~vocational rehabilitation division~~ department of social and rehabilitation services from funds herein provided:

(1) his actual and necessary travel expenses from his place of residence to the place of training and return;

(2) his living expenses while in training in an amount not in excess of $50 per week; and

(3) his expenses for tuition, books, and necessary equipment in training."

Section 83. Section 39-71-2101, MCA, is amended to read:

"39-71-2101. General requirements for electing coverage under plan. An employer may elect to be bound by

compensation plan No. 1 upon furnishing satisfactory proof to the division of his solvency and financial ability to pay the compensation and benefits in this chapter provided for and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, and may, by order of the division, make such payments directly to his employees as they may become entitled to receive ~~the--same~~ under the terms and conditions of this chapter."

Section 84. Section 39-71-2201, MCA, is amended to read:

"39-71-2201. Election to be bound by plan. (1) Any employer except those specified in ~~[92-206]~~ 39-71-403 may, by filing his election to become bound by compensation plan No. 2, insure his liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact such business in this state.

(2) Any employer electing to become bound by compensation plan No. 2 shall make his election on the form and in the manner prescribed by the division."

Section 85. Section 39-71-2206, MCA, is amended to read:

"39-71-2206. Deposits by insurer with division to guarantee payment of liability. (1) Before issuance of any policy by an insurer as herein authorized, ~~such~~ the insurer

must deposit with the division bonds of the United States or the state of Montana or of any school district, county, city, or town in the state of Montana or a corporate surety bond made out to and approved by the division in an amount not less than $5,000 or more than $100,000, as the division may determine. If any insurer fails to discharge any liability after the amount thereof ~~shall be~~ is determined by the division and within the time limited by the division, the division shall convert the bonds or such part thereof as is necessary into cash and from the proceeds liquidate such liability, and thereafter the insurer must make an additional deposit to meet any deficiency caused thereby. It is intended hereby to give the division the discretion in the matter of whether an insurer has failed to discharge any liability.

(2) Within 30 days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the division for the protection and guarantee of the payment of such liability in such sum as the division may direct. However, if the division ~~deems~~ considers the amount on deposit by the insurer under the provisions of subsection (1) of this section sufficient to cover all liabilities of the insurer, then no further deposit ~~shall~~ may be required.

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(3) Any deposit made under the provisions of compensation plan No. 2 ~~shall~~ must be held in trust by the division as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the division as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor by withdrawing the same or any part thereof and substituting other deposits therefor. Upon proof of the final payment of the liability for which such deposit was made, any deposit remaining ~~shall~~ must be returned to the depositor. All earnings made by such deposit ~~shall be~~ must first be applied upon any liability of the depositors, and if no such liability exists, then such earnings ~~shall~~ must upon demand be delivered to such depositor. The division and its bondsmen ~~shall be~~ are liable for the value and safekeeping of such deposit and shall at any time, upon demand of ~~its bondsmen, the~~ a depositor, ~~or the division~~, account for the same and the earnings thereof."

Section 86. Section 39-72-101, MCA, is amended to read:

"39-72-101. Short title. This chapter ~~shall be known~~ may be cited as "~~The~~ the "Occupational Disease Act of Montana"."

Section 87. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116(2).

(2) "Child" is as defined in 39-71-116(4).

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing any work for remuneration or profit. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".

(4) "Division" is as defined in 39-71-116(5).

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Husband" is as defined in 39-71-116(7).

(8) "Independent contractor" is as defined in 39-71-120.

(9) "Insurer" is as defined in 39-71-116(8). The term includes an employer who is self-insured under compensation plan No. 1.

(10) "Invalid" is as defined in 39-71-116(9).

(11) ~~The term "occupational~~ Occupational disease" ~~shall~~ mean means all diseases arising out of or contracted from and in the course of employment.

(12) "Order" is as defined in 39-71-116(10).

(13) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(14) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO2), and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(15) "Wages" is as defined in 39-71-116(20).

(16) "Wife" is as defined in 39-71-116(21).

(17) "Year" is as defined in 39-71-116(6) and 39-71-116(22)."

Section 88. Section 39-72-307, MCA, is amended to read:

"39-72-307. Deduction from wages of any part of premium a misdemeanor -- hospital contributions not prohibited. It ~~shall--be~~ is unlawful for the employer to deduct or obtain any part of any premium required to be paid

by this chapter from the wages or earnings of his ~~workmen~~ workers, or any of them, and the making or attempt to make any such deduction ~~shall be~~ is a misdemeanor, except that nothing in this section ~~shall~~ may be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this chapter provided."

Section 89. Section 39-72-508, MCA, is amended to read:

"39-72-508. Death due to pneumoconiosis. The claimant must submit the evidence necessary to establish that the miner's death was due to pneumoconiosis and that the pneumoconiosis arose out of employment in coal mines. Death will be found due to a ~~respirable~~ respiratory disease when death is ascribed to a chronic dust disease or to another chronic disease of the lung. Death will not be found due to a ~~respirable~~ respiratory disease in those cases in which the disease reported does not suggest a reasonable possibility that death was in fact due to pneumoconiosis; e.g., cancer of the lung, disease due to trauma, or pulmonary emboli. However, the presumptions established in subsections (2) and (3) of 39-72-501 apply."

Section 90. Section 39-72-701, MCA, is amended to read:

"39-72-701. Compensation for total disability or death due to occupational disease other than pneumoconiosis. The

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compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease other than pneumoconiosis, or the beneficiaries and dependents of the employee in the case of death caused by an occupational disease other than pneumoconiosis, ~~shall be~~ are entitled to under this chapter shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time as is provided in cases of temporary total disability, permanent total disability, and in cases of injuries causing death under the Workers' Compensation Act ~~of the state of Montana~~."

Section 91. Section 39-72-702, MCA, is amended to read:

"39-72-702. Compensation for total disability or death due to pneumoconiosis. Benefit payments for total disability or death due to pneumoconiosis shall, for the purpose of this chapter, be made as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at the rate of $155 per month.

(2) In the case of death of a miner due to pneumoconiosis or of a miner receiving benefits under ~~this part~~ subsection (1), benefits shall be paid to the miner's surviving spouse, if any, at the rate the deceased miner would receive such benefits if totally disabled.

(3) In the case of an individual entitled to benefit payments under subsection (1) or (2) who has one or more dependents, the benefit payments ~~shall~~ must be increased at the rate of 50% of such benefit payments if such individual has one dependent, 75% if such individual has two dependents, and 100% if such individual has three or more dependents."

Section 92. Section 39-72-708, MCA, is amended to read:

"39-72-708. Prohibiting supplementing of benefits. No person receiving compensation or benefits under ~~[71-1001--to 71-1000,--inclusive]--shall--be~~ chapter 73 of this title is entitled to compensation or benefits under this chapter."

Section 93. Section 39-73-109, MCA, is amended to read:

"39-73-109. Payment of benefits to surviving spouse. (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108, the surviving spouse, as long as such spouse remains unmarried, is entitled to receive the payments granted the deceased spouse.

(2) A person who otherwise is qualified to receive payments under subsection (1) of this section but whose spouse died prior to March 14, 1974, is hereby made eligible to begin receiving one-half of those payments; provided,

however, a person is not eligible for these payments if her <u>such spouse's</u> taxable income is $6,800 or more per year."

Section 94. Repealer. Sections 41-901 through 41-909, 92-613, and 92-1340, R.C.M. 1947, are repealed.

-End-

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LC 0067

1979 Legislature
Code Commissioner Bill - Summary

(Senate Bill No. 214

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO LABOR.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 39-1-101. This is new language enacted to clarify terminology utilized in the chapter regarding "commissioner" and "department".

Section 2. 39-1-102. Deleted "of labor and industry" for redundancy with 39-1-101; changed "be charged with the duty of enforcing" to "enforce" for clarity and uniform style; added "other" for clarification; and deleted "enacted by legislation" as redundant.

Section 3. 39-2-103. Changed "chapter on trusts" to "laws relating to trusts and fiduciary relationships" to clarify reference to material which is no longer located in a single chapter.

Section 4. 39-2-503. Deleted "except as provided in" as redundant.

Section 5. 39-2-703. In (3), deleted "all" and "without contributing negligence on his part" and added "subject to the provisions of 27-1-702" since Montana no longer has a doctrine of contributory negligence. (See 27-1-702, MCA) In (4), added "except as otherwise provided in the Workers' Compensation Act" to clarify that workers' compensation insurance does relieve an employer of further liability since that coverage is an employee's sole remedy.

Section 6. 39-2-704. In (1), deleted "all" and "without contributing negligence on his part" and added "subject to the provisions of 27-1-702" since Montana no longer has a doctrine of contributory negligence. In (3), added "except as otherwise provided in the Workers' Compensation Act" to clarify that there can be a bar to recovery if the employee has received workers' compensation benefits.

Section 7. 39-2-803. Grammatical changes.

Section 8. 39-3-104. In (1), added "employment of" for clarity.

Section 9. 39-3-202. Changed "the [act]" to "this part" for clarification of legislative intent. Section 1, Ch. 40, L. 1967, states that "any employer. . . who fails to pay any of his employees, as provided in the preceding or following sections, or violates any other provision of this act, shall be guilty of a misdemeanor." Since the legislature made the penalty section applicable to "following sections", subsequent legislation enacted in Title 41, Chapter 13, R.C.M. 1947, is subject to the penalty section.

Section 10. 39-3-203. Changed "[section]" to "section and 39-3-204", the substantive portions of the previous "section" of R.C.M. 1947.

Section 11. 39-3-204. Changed "[section]" to "section and 39-3-203". (See section 10.)

Section 12. 39-3-208. Rearranged sentence structure and changed "such 5% penalty" to "the 5% penalty specified in 39-3-206" for clarification.

Section 13. 39-3-210. In (1), changed "[act]" to "part" for clarification. (See section 9.)

Section 14. 39-3-211. Changed "[act]" to "part" for clarification. (See section 9.)

Section 15. 39-3-214. In (2), changed "[act]" to "part" for clarification. (See section 9.)

Section 16. 39-3-501. Changed "[41-1301 to 41-1311]" to "part 2 of this chapter" since the applicable portions of the reference are only to wage payments. (39-3-104 was part of the former reference but is redundant with 49-2-303; and part 8 of chapter 2 was part of the former reference but is redundant with 49-2-301.)

Section 17. 39-3-504. Deleted ", 39-3-104, part 8 of chapter 2," for clarification of legislative intent. (See section 16.)

Section 18. 39-3-505. Deleted ", 39-3-104, part 8 of chapter 2," for clarification of legislative intent. (See section 16.)

Section 19. 39-3-506. Deleted ", 39-3-104, part 8 of chapter 2," for clarification of legislative intent. (See section 16.)

Section 20. 39-3-604. Deleted language in subsection (1) because a certificate is no longer issued (41-2009, R.C.M. 1947, was repealed in 1974). In (2), deleted "and affidavit" because the 1974 Legislature deleted the affidavit requirement.

Section 21. 39-4-102. Grammatical and sentence structure changes.

Section 22. 39-4-103. Grammatical changes.

Section 23. 39-4-107. Grammatical and sentence structure changes.

Section 24. 39-4-108. Grammatical changes.

Section 25. 39-4-110. Grammatical changes.

Section 26. 39-5-102. Grammatical changes.

Section 27. 39-5-202. In (2) and (3), added "before a notary public" for uniformity and clarification.

Section 28. 39-5-403. Changed "prosecuting" to "county" for uniform terminology.

Section 29. 39-5-404. Changed "prosecuting" to "county" and "superior court" to "district court" for uniform terminology.

Section 30. 39-5-405. Changed "prosecuting" to "county" for uniform terminology.

Section 31. 39-6-106. In (6), deleted "when authorized by the department" because of changes by executive reorganization.

Section 32. 39-31-103. Grammatical changes.

Section 33. 39-31-208. In (1), added "in the hearing provided for in 39-31-207" for clarification.

Section 34. 39-31-309. Grammatical changes.

Section 35. 39-31-401. In (1), deleted "through 39-31-206, or 39-31-303" because the deleted sections do not address employee rights in relation to employers. In (3), rearranged sentence structure.

Section 36. 39-31-403. Changed "in the following manner" to "pursuant to this part" because of rearrangement. This change is proposed by amendment instead of recodification because the procedure in 39-31-409 was not included in the former language but is relevant.

Section 37. 39-51-201. In (19), changed "welfare" to "public" for consistency with MCA Title 53. Deleted (22) and (23) because their language conflicted with 39-51-201(7) and (10).

Section 38. 39-51-202. In (5), deleted "39-51-1102" because it is not applicable. It pertains only to employers not otherwise subject to the chapter who voluntarily elect to be subject, while "subsection (1), (2), (3), or (4)" pertain to employers statutorily subject to chapter 51.

Section 39. 39-51-203. In (8), changed "$40,000" to "$20,000" and "20 or more" to "10 or more" to correct figures on improperly enrolled bill (see Report No. 1, April 13, 1977, of the Joint Conference Committee on House Bill No. 245 -- Ch. 523, L. 1977).

Section 40. 39-51-204. In (1)(f), changed "10 days after publication thereof in the manner in 39-51-302 for general rules" to "in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules" because the MAPA was enacted subsequent to the questioned material.

Section 41. 39-51-302. Deleted and changed language as necessary to overcome conflicts with the Montana Administrative Procedure Act which was enacted subsequent to the provisions in this section.

Section 42. 39-51-304. In (1), changed "Subject to other provisions of this chapter" to "Except as otherwise provided" because provisions outside of "this chapter" are applicable, i.e., Title 2, chapter 18, MCA, State Employee Classification, Compensation, and Benefits. Deleted subsection (2) because it conflicts with Title 2, chapter 18, MCA. Renumbered "(3)" to "(2)". In ~~(4)~~ (3), changed language to conform to the provisions of 2-18-105, MCA.

Section 43. 39-51-309. In (2), changed "prosecuting" to "county" attorney for uniformity in terminology.

Section 44. 39-51-401. In (1), deleted "inclusive of voluntary contributions as provided in [87-109(c)(4), R.C.M. 1947]," because that statutory language does not address voluntary contributions (the former language in that reference which did discuss voluntary contributions was repealed by Sec. 1, Ch. 340, L. 1975).

Section 45. 39-51-402. In (2), deleted "39-51-1104, 39-51-1105" and "39-51-1301, or 39-51-1303 through 39-51-1306" because none of these sections address refunds of unemployment compensation contributions.

Section 46. 39-51-1109. Changed "[87-107(c)]" to "39-51-2403". Section 87-109(e), R.C.M. 1947, was added in 1971 by Ch. 117, L. 1971. The language of 87-107(c) referred to in 87-109(e) was that appearing in the parent volume. The parent volume version of 87-107(c) was deleted in 1973 by Ch. 262, L. 1973. Current section 87-107(e) appears to have replaced former 87-107(c) and 87-107(e) is now 39-51-2403, MCA.

Section 47. 39-51-1201. Grammatical changes.

Section 48. 39-51-1303. In (3), deleted "as provided in [93-2604]" because it adds nothing. The language of 93-2604 establishes a 5-year statute of limitations, but the language of 39-51-1303 is sufficient in itself to create a statute of limitations.

Section 49. 39-51-2104. Rearrangement of sentence structure; grammatical changes.

Section 50. 39-51-2108. Deleted "and [87-110(d), R.C.M. 1974]" since that subsection was repealed by Ch. 323, L. 1975.

Section 51. 39-51-2304. Grammatical changes.

Section 52. 39-51-3206. Deleted "as provided in [93-2604]". See section 49 above.

Section 53. 39-71-101. Deleted "the Workmen's Compensation Act or" for uniform terminology.

Section 54. 39-71-102. Deleted "or the safety provisions of this chapter" because the chapter referred to (R.C.M. Title 92, chapter 12, Safety Provisions) was repealed by Sec. 30, Ch. 341, L. 1969.

Section 55. 39-71-116. In (8), changed "39-71-501 through 39-71-507" to "part 5 of this chapter" since the reference is a general one to uninsured employers and is unaffected by inclusion of additional sections within part 5. In (12), (13), and (19), changed "workman" to "worker" for uniform terminology and consistency with the short title of chapter 71. In (18), deleted "and shall embrace all safety devices and safeguards provided or prescribed by the safety provisions of the chapter for the purpose of mitigating or preventing a specific danger" because Title 92, chapter 12 (safety provisions) was repealed by Sec. 30, Ch. 341, L. 1969.

Section 56. 39-71-302. Changed "workman" to "worker" for uniform terminology and consistency with the short title of chapter 71.

Section 57. 39-71-304. Changed "men" to "persons" for uniform style.

Section 58. 39-71-306. In (2), added "for injured workers" and changed "injured" to "deceased" to clarify that expenditures are not encouraged for burial of workers who are injured but not yet deceased.

Section 59. 39-71-309. Changed "workmen" to "workers" for uniform terminology and consistency with the short title of chapter 71.

Section 60. 39-71-401. Grammatical change.

Section 61. 39-71-406. Changed "workmen" to "workers" for uniform terminology and consistency with the short title of chapter 71.

Section 62. 39-71-410. Grammar changes and rearrangement of sentence structure.

Section 63. 39-71-411. Grammar changes.

Section 64. 39-71-501. Changed "39-71-501 through 39-71-507" to "this part". The original reference to "this section" (92-212, R.C.M.) was changed to the present reference. Since 92-213, R.C.M., (now sections 39-71-508 through 39-71-510), cited 92-212 for the definition of "uninsured employer", all the sections of "this part" were clearly intended to be covered by this definition.

Section 65. 39-71-506. Changed "39-71-501 through 39-71-507" to "39-71-504". The internal reference originally cited "this section", which was changed by recodification to the 7 sections into which 92-212, R.C.M. 1947, was divided. Section 29-71-504, however, is the only section which addresses "amount(s) due the fund".

Section 66. 39-71-510. Changed "39-71-402, 39-71-407, and 39-71-501 through 39-71-507" to "39-71-407, 39-71-502, and 39-71-503". The internal reference originally referred to "92-212 and 92-614", which were divided by recodification into the sections presently cited. However, only 39-71-407, 39-71-502, and 39-71-503 address the purpose of the uninsured employers' fund.

Section 67. 39-71-602. Changed "workman" to "worker" for uniform terminology and consistency with the short title of chapter 71.

Section 68. 39-71-603. Changed "[act]" to "chapter". Section 50-75-107 was derived from the "act" in question but does not affect the change to "chapter". Similarly, several sections in Title 92 of R.C.M. 1947 were enacted subsequent to the "act" in question but their inclusion in chapter 71 does not adversely affect the proposed amendment. The legislative intent appears to be to extend application of provisions of "this act" to material enacted subsequent thereto.

Section 69. 39-71-721. In (5), deleted "or if the widow or widower remarries" and "or widow or widower" as redundant with the second sentence of (5).

Section 70. 39-71-738. Changed "workman" to "worker" for uniform terminology and consistency with the short title of chapter 71.

Section 71. 39-71-739. Grammatical changes.

Section 72. 39-71-801. Changed "[act]" to "chapter" (see section 68 explanation).

Section 73. 39-71-807. Grammatical changes.

Section 74. 39-71-813. Changed "[act]" to "chapter" (see section 68 explanation).

Section 75. 39-71-901. In (2), deleted "section of rehabilitation" because the division of workers' compensation is, in fact, the certifying agency according to division personnel.

Section 76. 39-71-902. In (1), changed "[act]" to "chapter" because it appears to be the intent of the Legislature to include this material, enacted in 1973, along with existing material in the "Workers' Compensation Act". Thus the explanation in section 68 above is applicable.

Section 77. 39-71-903. Changed "[act]" to "chapter" (see section 76 explanation).

Section 78. 39-71-907. Changed "[act]" to "chapter" (see section 76 explanation).

Section 79. 39-71-908. Changed "as" to "has" as an obvious typographical error.

Section 80. 39-71-910. Grammatical changes.

Section 81. 39-71-1001. Changed "[Title 41, chapter 8, R.C.M. 1947]" to "Title 53, chapter 7, parts 1 and 2". In recodification, Title 41, chapter 8, R.C.M. 1947, became Title 53, chapter 7, part 2. However, the material presently in Title 53, chapter 7, part 1, was also part of Title 41, chapter 8, R.C.M. 1947 before it was transferred by Ch. 121, L. 1974 to Title 71, chapter 21, R.C.M. 1947. Hence, the former reference was inaccurate, and is here corrected.

Section 82. 39-71-1003. Changed "workman" to "worker" for uniform terminology and consistency with the short title of chapter 71. Changed "vocational rehabilitation division" to "department of social and rehabilitation services" to conform with the intent of Ch. 23, L. 1975, §§83 and 84. Formerly "vocational rehabilitation division" was a division within the former "board of education".

Section 83. 39-71-2101. Grammatical changes.

Section 84. 39-71-2201. Changed "[92-206]" to "39-71-403". Other MCA provisions originally appeared in 92-206 but are inapplicable in the context of this internal reference.

Section 85. 39-71-2206. In (3), changed "upon demand of its bondsman, the depositor, or the division" to "upon demand of a depositor". The present language would have the division or bondsmen demanding an accounting from themselves.

Section 86. 39-72-101. Grammatical changes.

Section 87. 39-72-102. Changed for purpose of uniform terminology.

Section 88. 39-72-307. Grammatical changes.

Section 89. 39-72-508. Grammatical changes.

Section 90. 39-72-701. Added "other than pneumoconiosis" to clarify that benefits are different for total disability or death due to pneumoconiosis, which is covered under 39-72-702.

Section 91. 39-72-702. In (2), changed "[part]" to "subsection (1)" to clarify the distinction made by the legislature between partial disability and total disability benefits.

Section 92. 39-72-708. Changed "[71-1001 to 71-1008, inclusive]" to "chapter 73 of this title". This change is proposed by amendment instead of being done by recodification because material enacted subsequent to those sections cited is also included. However, it appears to be the intent of the legislature to extend application to later enactments. Additionally, former R.C.M. section 71-229 is included in "chapter 73" because it is applicable to silicosis benefits.

Section 93. 39-73-109. In (2), changed "her" to "such spouse's" for consistency in use of gender.

Section 94. Repealer. 41-901 through 41-909, R.C.M. 1947, should be repealed because Section 82A-1010, R.C.M. 1947 (Sec. 1, Ch. 272, L. 1971) abolished the state board of arbitration and conciliation, created in 41-901 through 41-909.

92-613, R.C.M. 1947, should be repealed because it is integrally related to former Section 91-612, R.C.M. 1947, which was repealed by Sec. 88, Ch. 23, L. 1975.

92-1340, R.C.M. 1947, should be repealed. The penalty provision in this section is obsolete since the enforcement procedures in part 5, chapter 71, Title 39, are used in place of 92-1340.

FORTY-SIXTH LEGISLATIVE SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB #8	1/22/79	2/6/79	2/13/79	2/13/79					
SB #29	1/4/79	1/6/79	1/6/79	1/6/79					
SB #110	1/16/79	1/23/79	2/1/79		2/1/79				
SB #111	1/16/79	1/23/79	2/13/79		TABLED				
SB #140	1/17/79	1/25/79	1/25/79			1/25/79			
SB #141	1/17/79	1/25/79	1/27/79			1/27/79			
SB #150	1/18/79	1/30/79	2/1/79	2/1/79					
SB #155	1/18/79	1/27/79	1/30/79			1/31/79			
SB #161	1/18/79	2/13/79	2/13/79	2/13/79					
SB #180	1/19/79	--------	1/22/79	Referred	to Business & Industry Committee				
SB #190	1/22/79	2/6/79	2/6/79			2/7/79			
SB #208	1/24/79	2/1/79	2/1/79			2/1/79			
SB #208	2/10/79	2/13/79	2/13/79			2/13/79			
SB #214	1/24/79	--------	1/31/79	Referred	to Judiciary Committee				
SB #239	1/26/79	2/13/79	2/13/79		2/13/79				
SB #252	1/25/79	2/13/79	2/17/79			2/17/79			

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

February 1, 1979

The meeting of the Labor and Employment Relations Committee was called to order by Chairman Lowe on February 1, 1979, in Room 404 of the State Capitol at 12:30 p.m.

ROLL CALL: All members of the Committee were present.

Chairman Lowe asked Senator Lawrence G. Stimatz to address the Committee as Sponsor of Senate Bill #190. Senator Stimatz explained that the bill was designed to exclude from membership in the Public Employees' Retirement System students in public educational institutions and those CETA-funded employees who elect to be excluded; and to allow persons so excluded who later become members to qualify the excluded service. Senator Stimatz then introduced Larry P. Nachtsheim of the Personnel Division to explain the financial impact to the Committee. Mr. Nachtsheim's statement is attached as Exhibit "A". Mr. Bruce H. DeRosier, Executive Director of the Employment and Training Division of the Department of Labor then offered testimony in favor of Senate Bill #190 and his statement is attached as Exhibit "B".

Another proponent of the bill was Mr. David G. Goss representing the City of Billings. Mr. Goss proposed an amendment to Senate Bill #190 which is attached as Exhibit "C".

After a general discussion of Senate Bill #190, Senator Dover moved the Amendment and Senator Aklestad seconded, however, Senator Dover asked the Department to rework the amendment to make it shorter and to provide the Committee with a Financial Statement at the next meeting to be held on February 6, 1979.

Chairman Lowe then asked Senator Hafferman to address the Committee on Senate Bill #208. Senator Hafferman stated that this bill was introduced at the request of the Code Commissioner and introduced Mr. John A. Bobinski, Legal Counsel for the Personnel Division, to explain the changes to the Committee. Mr. Bobinski proposed several amendments to the bill which are attached as Exhibit "D". Mr. Bobinski stated that there were no substantive changes in the bill and explained each amendment to the Committee.

There being no proponents or opponents to Senate Bill #208, Senator Dover moved passage of the bill with the amendments, seconded by Senator Palmer and the bill passed unanimously as amended.

Representative Pavlovich was then asked by Chairman Lowe to address the Committee on House Bill #31. Senator Pavlovich explained that this bill was introduced at the request of the Department of Labor and Industry to clarify the method of charging interest on past-due contributions.

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

46TH LEGISLATIVE SESSION - - 1979

Date 2-1-79

NAME	PRESENT	ABSENT	EXCUSE
HAROLD C. NELSON, VICE CHAIRMAN	✓		
GARY AKLESTAD	✓		
HAROLD L. DOVER	✓		
WILLIAM F. HAFFERMAN	✓		
JOHN (SANDY) MEHRENS	✓		
BOB PALMER	✓		
ELMER D. SEVERSON	✓		
RICHARD G. SMITH	✓		
BILL R. LOWE, CHAIRMAN	✓		

62

Attach to minutes each day.

AMENDMENTS TO SB-208 (WHITE COPY)

1. Page 6, line 22.
   Strike: "and 39-3-204"

2. Page 7, line 22.
   Strike: "and 39-3-203"

3. Page 11, line 17.
   Strike: "the"
   Following: "the"
   Insert: "a"

4. Page 23, line 8.
   Strike: "Standards for apprenticeship"
   Following: "apprenticeship"
   Insert: "Apprenticeship"
   Strike: "are as follows"
   Following: "follows"
   Insert: "shall contain"

5. Page 24, line 16.
   Strike: "the provisions of"

6. Page 25, lines 3 through 16.
   Strike: lines 3 through 16 in their entirety
   Following: line 16
   Insert: "(2)(a) "Public employee" means:
   (i) except as provided in subsection (2)(b) of this section, a person employed by a public employer in any capacity; and

   (ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.

   (2)(b) "Public employee" does not mean:
   (i) an elected official;
   (ii) a person directly appointed by the governor;
   (iii) a supervisory employee, as defined in subsection (3) of this section;
   (iv) a management official, as defined in subsection (4) of this section;
   (v) a member of any state board or commission who serves the state intermittently;
   (vi) a school district clerk;
   (vii) a school administrator;
   (viii) a registered professional nurse performing service for a health care facility;
   (ix) a professional engineer;
   or
   (x) an engineer-in-training."

7. Page 29, line 17.
Strike: "and"

8. Page 29, line 18.
Strike: "39-31-204"

9. Page 56, line 19.
Strike: "must be"
Following: "be"
Insert: "are"

10. Page 56, line 25.
Following: "or"
Strike: "be"
Following: "be"
Insert: "it is"

11. Page 62, line 3.
Following: "or"
Strike: "be"
Following: "be"
Insert: "it is"

STANDING COMMITTEE REPORT

February 1 19 79

MR. President:

We, your committee on Labor & Employment Relations

having had under consideration Senate Bill No. 208

Respectfully report as follows: That Senate Bill No. 208
introduced bill be amended as follows:

1. Page 6, line 22.
Strike: "and 39-3-204"

2. Page 7, line 22.
Strike: "and 39-3-203"

3. Page 11, line 17.
Following: "file"
Strike: "the"
Insert: "a"

4. Page 23, line 7.
Following: "39-6-106."
Strike: "Standards for apprenticeship"
Insert: "Apprenticeship"

DO PASS

(CONTINUED)

Chairman.

STATE PUB. CO.
Helena, Mont.

5. Page 23, line 8.
Following: line 7
Strike: "Standards for apprenticeship"
Insert: "Apprenticeship"

6. Page 23, line 8.
Following: "agreements"
Strike: "are as follows"
Insert: "shall contain"

7. Page 24, line 16.
Strike: "the provisions of"

8. Page 25, lines 3 through 16.
Strike: lines 3 through 16 in their entirety

9. Page 25.
Following: line 16
Insert: "(2)(a) "Public employee" means:
(i) except as provided in subsection (2)(b) of this section, a person employed by a public employer in any capacity; and

(ii) an individual whose work has ceased as a consequence of of in connection with any unfair labor practice or concerted employee action.

(2)(b) "Public employee" does not mean:
(i) an elected official;
(ii) a person directly appointed by the governor;
(iii) a supervisory employee, as defined in subsection (3) of this section;
(iv) a management official, as defined in subsection (4) of this section;
(v) a member of any state board or commission who serves the state intermittently;
(vi) a school district clerk;
(vii) a school administrator;
(viii) a registered professional nurse performing service for a health care facility;
(ix) a professional engineer;
or
(x) an engineer-in-training."

10. Page 29, line 17.
Strike: "and"

11. Page 29, line 19.
Strike: "39-31-204"

12. Page 56, line 19.
Following: "shall"
Strike: "must be"
Insert: "are"

(CONTINUED)

13. Page 56, line 25.
Following: "or"
Strike" "be"
Insert: "it is"

14. Page 62, line 3.
Following: "or"
Strike: "be"
Insert: "it is"

And, as so amended,
DO PASS

Senator William R. Lowe,
Chairman.

STATE PUB. CO.
Helena, Mont.

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

February 8, 1979

The meeting of the Labor and Employment Relations Committee was called to order by Chairman Lowe on February 8, 1979, in Room 404 of the State Capitol at 12:30 p.m.

ROLL CALL: All members were present.

Chairman Lowe asked Senator Dover as sponsor of Senate Bill #258 to address the Committee. Senator Dover explained that under the present statutes, political subdivisions must purchase workers' compensation insurance from the State. The Montana Association of Counties is conducting a feasibility study to determine the feasibility of pooling the counties into a liability insurance pool and workers' compensation pool. If this study is determined to be feasible and cheaper for the property taxpayers, then a change in the law would be necessary. Senator further stated that the purpose of the legislation was to provide options for local government to purchase workers' compensation from the State, or they could self-insure, or purchase insurance privately. Senator Dover then introduced Mr. Dean Zinnecker representing the Montana Association of Counties.

Mr. Zinnecker explained the feasibility study to the Committee and that the Association hoped that it would save the taxpayers money in the long run if they could compare other options.

Mr. David G. Goss representing the City of Billings also offered testimony in support of Senate Bill #258 and his testimony is attached as Exhibit "A".

Chairman Lowe then asked if there were any opponents to Senate Bill #258 at which point Mr. James L. Murphy, Assistant Administrator for the Workers' Compensation Division, explained to the Committee that he was neither a proponent nor an opponent, but felt that there were some things the Committee should be aware of. Mr. Murphy proposed some amendments to the bill which are attached as Exhibit "C". Mr. Murphy explained that one city could not obligate itself to another city and each city would require its own policy. Mr. Murphy went on to explain that there would be additional costs in implementing this program if they chose in dealing with self-insurance. It would require additional people to handle claims, management costs, etc. Mr. Murphy explained that the entities must be in a position to pay cash payments as the claims occur and in serious cases, claims could be in the hundred thousands.

There was a question and answer period after which Senator Lowe closed the hearing on Senate Bill #258.

Chairman Lowe then opened the hearing on House Bill #146 and Representative Dan Harrington from District 88 addressed the Committee. Representative Harrington was sponsoring this bill at the request of the Department of Labor & Industry and explained that the bill was merely changing the title of the Unemployment Compensation Law to Unemployment Insurance Law. Representative Harrington stated that the term "compensation" was confusing and did not conform to the nationwide terminology.

Mr. Fred Barrett representing the Employment Security Division spoke in favor of the bill.

There were no opponents to this bill.

Senator Dover moved that the Committee Do Pass this bill and further moved that it be placed on the Consent Calendar which passed unanimously. Senator Hafferman will carry this bill.

The hearing was then opened on House Bill #147 also sponsored by Representative Harrington. This bill repeals Section 39-51-302 relating to the method of adopting, amending, or rescinding rules relating to unemployment compensation. Representative Harrington explained that this system was not being used to adopt rules and that the Administrative Procedure Act was now being followed.

Mr. Fred Barrett then addressed the Committee on this bill and informed the Committee that Senate Bill #208 already out of Committee also included a repealer to this section and if the Committee would like to hold House Bill #147 until they see what happens to Senate Bill #208, the department would have no objection.

Senator Dover moved to table House Bill #147 until a later date and the Committee voted unanimously on this move.

Jim Lear, attorney for the Legislative Council, then addressed the Committee on House Bill #183 at the request of the Code Commissioner. Mr. Lear explained the changes being made in this bill and these comments are attached as Exhibit "C".

Senator Smith agreed to carry House Bill #183 in the Senate.

Senator Dover moved to pass House Bill #183 and the Committee unanimously voted on this move.

The meeting was adjourned at 1:30 p.m.

William R. Lowe

Senator William R. Lowe

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

February 13, 1979

A meeting of the Labor and Employment Relations Committee was called to order by Chairman Lowe on February 13, 1979, in Room 404 of the State Capitol at 12:30 p.m.

ROLL CALL: All members were present.

Senator Lowe asked the Committee to consider taking executive action on Senate Bill #208 which was returned to the Committee for clarification. Senator Lowe proposed the following amendment to the bill:

Page 48, line 21 through line 11 on page 49.
Strike: Section 41 in its entirety
Renumber: all subsequent sections.

Senator Palmer moved the amendment which was seconded by Senator Dover, and unanimously passed by the Committee.

Senator Palmer moved the bill, seconded by Senator Dover and passed the Committee unanimously.

Chairman Lowe asked the Committee to take action on Senate Bill #161 at which point, Senator Dover moved to pass the bill and seconded by Senator Severson. A roll call vote was taken on this bill which passed by a vote of 5 to 4.

Chairman Lowe then asked Senator Dover if he was prepared to submit his amendments to Senate Bill #8 to the Committee. Senator Dover's amendments to this bill are as follows:

1. Title, line 4 through line 5.
Following: "AN ACT"
Strike: "REQUIRING THE STANDARD PREVAILING RATE OF WAGES TO BE CONSISTENT WITH FEDERAL LAW"
Insert: "TO CLARIFY CERTAIN DEFINITIONS RELATING TO THE STANDARD PREVAILING RATE OF WAGES"

2. Title, line 6.
Following: "$50,000"
Insert: "FROM PROVISIONS OF PART 4 OF TITLE 18, CHAPTER 2"

3. Page 2, line 24.
Following: "(1)"
Insert: "The Montana commissioner of labor may determine the standard prevailing rate of wages in the county or locality in which the contract is to be performed. The

STANDING COMMITTEE REPORT

February 13 19 79

MR. President:

We, your committee on Labor & Employment Relations

having had under consideration Senate Bill No. 208

Respectfully report as follows: That Senate Bill No. 208

third reading bill be passed as amended:

1. Page 48, line 21 through line 11 on page 49.
Strike: Section 41 in its entirety
renumber all subsequent sections

And, as so amended
DO PASS

Senator William R. Lowe Chairman.

STATE PUB. CO.
Helena, Mont.

LABOR COMMITTEE

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 856	"An act to exempt salaried employees from being paid in accordance with actual end-of-period payroll; amending section 2-18-405, MCA"	2/17/79	Vincent	2/20/79	AS AMENDED DO PASS	2/20/79
SB 150	"An act to generally revise the occupational disease act of Montana; amending sections ....."	2/13/79	Mehrens	3/1/79	CONCURRED IN	3/1/79
SB 155	"An act to exempt certain employees from provisions of the overtime compensation law."	2/10/79	Boylan	3/1/79	AS AMENDED, BE CONCURRED IN	3/8/79
SB 190	"An act to revise the exclusions from membership in the public employees' retirement system by excluding students in public educational institutions and those CETA...."	2/13/79	Stimatz	3/1/79	CONCURRED IN	3/1/79
SB 208	"An act to generally revise and clarify the laws relating to labor; enacting section 39-1-101, MCA; and repealing sections 41-901 through 41-909, 92-613, and 92-1340. "	2/21/79	Hafferman	3/6/79	CONCURRED IN	3/8/79
SB 266	"An act to amend section 39-5-102, MCA, to exclude musical booking services from the employment agency act and booking service."	2/13/79	Palmer	3/3/79	CONCURRED IN	3/3/79

SENATE BILL NO. 208

INTRODUCED BY HAFFERMAN, LOWE

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO LABOR; ENACTING SECTION 39-1-101, MCA; AND REPEALING SECTIONS 41-901 THROUGH 41-909, 92-613, AND 92-1340, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. 39-1-101. Definitions. As used in this chapter, unless the context requires otherwise the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry as provided for in 2-15-1701.

(2) "Department" means the department of labor and industry as provided for in 2-15-1701.

Section 2. Section 39-1-102, MCA, is amended to read:

"39-1-102. Duties of department. The department of ~~labor and industry~~ shall ~~be charged with the duty of~~ enforcing enforce all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, and all laws relating to child labor ~~regulating~~ which regulate the employment of children in any manner, and to shall administer the laws of the state relating to free employment offices, and all other state labor laws enacted ~~by legislation~~."

Section 3. Section 39-2-103, MCA, is amended to read:

"39-2-103. Confidential employment. The obligations peculiar to confidential employments are defined in the ~~chapter on trusts~~ laws relating to trusts and fiduciary relationships."

Section 4. Section 39-2-503, MCA, is amended to read:

"39-2-503. Termination at will. An employment having no specified term may be terminated at the will of either party on notice to the other, except where otherwise provided by this chapter, 28-10-301 through 28-10-303, 28-10-502, and 30-11-601 through 30-11-605, and ~~except as provided in~~ 39-2-302."

Section 5. Section 39-2-703, MCA, is amended to read:

"39-2-703. Liability of railway corporation for negligence of fellow servants. (1) Every person or corporation operating a railway or railroad in this state ~~shall be~~ is liable for all damages sustained by any employee of such person or corporation in consequence of the neglect of any other employee ~~or employees~~ thereof or by the mismanagement of any other employee ~~or employees~~ thereof and in consequence of the willful wrongs, whether of commission or omission, of any other employee ~~or employees~~ thereof when

THIRD READING

such neglect, ~~mismanagement,~~ or wrongs are in any manner connected with the use and operation of any railway or railroad on or about which ~~they shall be~~ he is employed, ~~and no~~ No contract which restricts such liability ~~shall be~~ is legal or binding.

(2) In case of the death of any such employee in consequence of any injury or damage so sustained, the right of action provided by subsection (1) ~~of this section~~ shall survive and may be prosecuted and maintained by his heirs or personal representatives.

(3) Every railway corporation doing business in this state, including electric railway corporations, ~~shall be~~ is liable for ~~all~~ damages sustained by an employee thereof within this state ~~without contributing negligence on his part~~, subject to the provisions of 27-1-702, when such damages are caused by the negligence of any train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, motorman, or ~~of~~ any other employee who has superintendence of any stationary or hand signal.

(4) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into, either before or after the injury, between the person injured and any of the employers named in subsection (3) ~~of this section shall constitute any~~ is a bar or defense

to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act."

Section 6. Section 39-2-704, MCA, is amended to read:

"39-2-704. Liability of mining company for negligence of fellow servants. (1) Every company, corporation, or individual, operating any mine, smelter, or mill for the refining of ores, ~~shall be~~ is liable for any damages sustained by any ~~employees~~ employee thereof within this state, ~~without contributing negligence on his part~~, subject to the provisions of 27-1-702, when such damage is caused by the negligence of any superintendent, foreman, shift boss, hoisting or other engineer, or craneman.

(2) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into before the injury between the person injured and any of the employers named in this section ~~shall constitute any~~ is a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

(3) In case of the death of any such ~~employees~~ employee in consequence of any injury or damages so sustained, the right of action ~~shall survive~~ survives and may be prosecuted and maintained by ~~their~~ his heirs or personal representatives."

Section 7. Section 39-2-803, MCA, is amended to read:

"39-2-803. Blacklisting prohibited. If any company or corporation in this state authorizes or allows any of its agents to blacklist or any person does blacklist any discharged employee or attempts by word or writing or any other means whatever to prevent any discharged employee or any employee who may have voluntarily left ~~said~~ the company's service from obtaining employment with another person, except as provided for in 39-2-802, such company or corporation or person is liable in punitive damages to such ~~employees~~ employee so prevented from obtaining employment, to be recovered by him in a civil action, and is also punishable as provided in 39-2-804."

Section 8. Section 39-3-104, MCA, is amended to read:

"39-3-104. Equal pay for women for equivalent service. (1) It ~~shall be~~ is unlawful for ~~any person, firm~~ the state, or any county, municipal entity, or school district, public or private corporation, person, or firm to employ any ~~woman~~ or women in any occupation ~~or calling~~ within the state of Montana for ~~salaries, wages, or~~ compensation ~~which are~~ less than that paid to men for equivalent service or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of employment of any kind or description.

(2) ~~Any person, firm~~ If the state, or any county,

municipal entity, or school district, ~~officers or~~ public or private corporation, ~~violating~~ persons, or firm violates any of the provisions of subsection (1) ~~of this section shall be deemed~~ it is guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 or more than $500 for each offense."

Section 9. Section 39-3-202, MCA, is amended to read:

"39-3-202. Rulemaking power of commissioner. The commissioner is authorized to issue, amend, and enforce rules for the purpose of carrying out the provisions of ~~the [act]~~ this part."

Section 10. Section 39-3-203, MCA, is amended to read:

"39-3-203. Employer to notify employee on written demand as to rate of wages and date of paydays. (1) Each employer or an authorized representative of the employer shall, on written demand, prior to the commencing of work, notify each employee as to the rate of wages to be paid, whether by the hour, day, week, month, or ~~yearly basis~~ year, and date of paydays. Such notification ~~shall~~ must be in writing to each employee or ~~the~~ by posting of notice in a conspicuous place.

(2) The provisions of this [section] ~~and 39-3-204 shall~~ do not apply ~~in respect~~ to an employer who has entered into a signed collective bargaining agreement, when such agreement contains conditions of employment, wages to be

received, and hours to be worked, or to employers engaged in agriculture or stockraising; provided, however, such employers shall conform comply with the provisions of 39-3-205."

Section 11. Section 39-3-204, MCA, is amended to read:

"39-3-204. Payment of wages generally. (1) Every employer of labor in the state of Montana shall pay to each ~~of his employees~~ employee the wages earned by such ~~employees~~ employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value thereof, and no person for whom labor has been performed ~~shall~~ may withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the same become are due and payable. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever such deductions are a part of the conditions of employment, or other deductions provided for by law.

(2) If at such time of payment of wages any employee ~~shall be~~ is absent from the regular place of labor, he ~~shall~~ be is entitled to such payment at any time thereafter.

(3) Provisions of this ~~[section]~~ ~~and 39-3-203~~ ~~shall~~ do not apply to any professional, supervisory, or technical ~~employees~~ employee who by custom ~~receive their~~ receives his wages earned at least once monthly."

Section 12. Section 39-3-208, MCA, is amended to read:

"39-3-208. Contracts in violation of part void. Any contract or agreement made between any person, partnership, or corporation and any ~~parties~~ party in his, ~~or~~ its, ~~or their employ whose provision shall be in violation, evasion~~ the provisions of which violates, evade, or ~~circumvention of~~ circumvent this part ~~shall be~~ is unlawful and void, but such employee may sue to recover his wages earned, together with ~~such~~ the 5% penalty specified in 39-3-206 or separately to recover the penalty if the wages have been paid."

Section 13. Section 39-3-210, MCA, is amended to read:

"39-3-210. Investigative powers of commissioner. (1) The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as which they may deem consider appropriate to determine whether any person has violated any provision of this ~~[act]~~ part or any rule issued hereunder or which may aid in the enforcement of the provisions of this ~~[act]~~ part.

(2) The commissioner or his authorized representatives ~~shall have power to~~ may administer oaths and examine witnesses under oath; issue subpoenas; compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony; and take depositions and affidavits in any proceeding before the

commissioner."

Section 14. Section 39-3-211, MCA, is amended to read:

"39-3-211. Commissioner to take wage assignments. Whenever the commissioner determines that one or more employees have claims for unpaid wages, he shall, upon the written request of the employee, take an assignment of the claim in trust for such employee and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this ~~[act]~~ part. With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this section."

Section 15. Section 39-3-214, MCA, is amended to read:

"39-3-214. Court costs and attorneys' fees. (1) Whenever it ~~shall become~~ is necessary for the employee to enter or maintain a suit at law for the recovery or collection of wages due as provided for by this part, ~~then~~ such a resulting judgment ~~shall~~ must include a reasonable attorney's fee in favor of the successful party, to be taxed as part of the costs in the case.

(2) Any judgment for the plaintiff in a proceeding pursuant to this ~~[act]--shall~~ part must include all costs reasonably incurred in connection with the proceeding, including attorneys' fees.

(3) If the proceeding is maintained by the commissioner, no court costs or fees ~~shall be~~ are required

of him nor ~~shall he be~~ is he required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding."

Section 16. Section 39-3-501, MCA, is amended to read:

"39-3-501. Certain laws extended to certain employers in mineral and oil industry. For the purposes of this part, all the provisions of ~~[41-1301 to 41-1311]~~ ~~shall~~ part 2 of this chapter extend to and govern every person, firm, partnership, or corporation engaged in the business of extracting or of extracting and refining or reducing metals and minerals or mining for coal or drilling for oil, save and except such persons, firms, partnerships, or corporations as have a free and unencumbered title to not less than one-half the fee of the property being worked. For this purpose, an outstanding unpaid or unredeemed tax sale certificate ~~shall~~ is not be considered an encumbrance."

Section 17. Section 39-3-504, MCA, is amended to read:

"39-3-504. Report of violations directly to county attorney by ~~employees~~ employee. Any ~~employees~~ employee may make complaint ~~direct~~ directly to the county attorney relative to any violation of this part~~, 39-3-104, part 8 of chapter 2,~~ or part 2 of this chapter."

Section 18. Section 39-3-505, MCA, is amended to read:

"39-3-505. County attorney to notify commissioner of ~~violations~~ violation reported directly by employees

employee. The county attorney of the county shall promptly notify the commissioner of labor and industry of any complaint made by any employee relative to the violation of any of the provisions of this part~~, 39-3-104, part 8 of chapter 2,~~ or part 2 of this chapter and shall in writing keep ~~said~~ the commissioner advised of each step in any proceeding taken by ~~said~~ the county attorney thereunder."

Section 19. Section 39-3-506, MCA, is amended to read:

"39-3-506. County attorney to file complaint in district court on belief of violation. If ~~said~~ a county attorney believes after receiving ~~said~~ information that the provisions of this part~~, 39-3-104, part 8 of chapter 2,~~ or part 2 of this chapter have been violated and that such violation ~~or violations~~ was ~~or were~~ willful or that the financial condition of the employer is such as to endanger employees in receiving prompt payment or collection of wages, ~~it shall be his duty to~~ he shall file the A complaint ~~aforesaid~~ in ~~said~~ district court. All proceedings upon such complaint ~~shall~~ must be promptly prosecuted."

Section 20. Section 39-3-604, MCA, is amended to read:

"39-3-604. Bond to be filed by lessee -- bond requirements. (1) Every person who leases from another person premises for the purpose of conducting therein a business as a restaurant, bar, or tavern is hereby required to file a bond equal to at least double the amount of the

projected semimonthly payroll with the commissioner of labor and industry. ~~Said~~ This bond ~~shall~~ must at all times be kept in full force and effect ~~and any cancellation or revocation thereof or withdrawal of the sureties therefrom shall automatically revoke and suspend the certificate issued to the lessee of this part until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided.~~

(2) The bond ~~and affidavit~~ required by subsection (1) of this section ~~shall~~ must be filed with the commissioner of labor and industry. The state ~~of Montana shall~~ must be named as the obligee therein, with good and sufficient sureties to be approved by the attorney general.

(3) Such bond ~~shall~~ must be conditioned to assure that in any lease transaction of the type referred to in 39-3-608 the persons who perform labor or other personal services for the lessee are guaranteed their wages in the event the lessee ceases operation of the business for any reason and is unable to pay the wages due and owing the employees and to assure payment due the division of employment security as a result of payroll taxes."

Section 21. Section 39-4-102, MCA, is amended to read:

"39-4-102. Drivers and attendants of motor buses. (1) Drivers or attendants of motor buses employed in the state ~~shall~~ may not be employed for more than 8 hours in ~~the~~ any

24-hour period. Drivers or attendants of motor buses ~~shall~~ must be allowed a rest of at least 12 hours between the completion of their services in any 24-hour period and the beginning of their services in the next succeeding 24-hour period. In computing the number of hours of employment made by the provisions of this section, evidence may be introduced showing that part of ~~said~~ such time ~~shall be~~ is consumed prior to entry within the state.

(2) The provisions of this section ~~shall~~ do not be ~~effective~~ apply when life is in danger ~~of destruction~~ or ~~in case of danger of~~ property is in imminent danger of destruction; or in case of delay due to accident or ~~impassable~~ impassable roads, abnormal road conditions, or snow blockades; or ~~shall not affect the delay of~~ when mails for ~~said~~ the drivers or attendants are delayed.

(3) ~~Attendants~~ "Attendant", for the purpose of this section, ~~are~~ is defined as any employee engaged for a portion of ~~the 24-hour period in~~ a day driving or repairing a motor bus and who is required to remain on ~~said~~ the vehicle as a relief driver or mechanic for time in excess of the 8-hour period ~~of~~ for which he ~~shall be~~ is rightly employed.

(4) Any employer or supervisor in charge of ~~employee~~ employees who ~~shall require~~ requires a driver or attendant as above defined to labor contrary to the provisions of this

section ~~shall be declared~~ is guilty of a misdemeanor and upon conviction ~~shall be punished~~ is punishable by a fine of not less than $100 or more than $600 or by imprisonment of not less than 30 days or more than 7 months or both such fine and imprisonment.

(5) All motor bus companies operating lines in this state ~~shall be~~ are liable in damage for all injuries to the person ~~or persons~~ resulting ~~in~~ from the violation of the provisions of ~~said~~ this section."

Section 22. Section 39-4-103, MCA, is amended to read:

"39-4-103. Underground miners and smeltermen. (1) The period of employment of ~~workingmen~~ workers in all underground mines or workings, including railroad or other tunnels, ~~shall be~~ is 8 hours per day, except in cases of emergency where when life and property are in imminent danger.

(2) The period of employment of ~~workingmen~~ workers in smelters, ~~stamp mills~~ stamp mills, sampling works, concentrators, and all other institutions for the reduction of ores and refining of ores or metals ~~shall be~~ is 8 hours per day, except in cases of emergency where life or property is in imminent danger.

(3) Any ~~person or persons, body corporate~~ corporation, agent, manager, or employer who ~~shall violate~~ violates any of the provisions of this section ~~shall be~~ is guilty of a

misdemeanor and upon conviction thereof for each offense be is subject to a fine of not less than $100 or more than $600 or by imprisonment in the county jail for a period of not less than 1 month or more than 7 months or by both such fine and imprisonment."

Section 23. Section 39-4-107, MCA, is amended to read:

"39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours ~~shall constitute~~ constitutes a day's work in all works and undertakings carried on or aided by any municipal, or county government, or the state government, or a first-class school ~~districts~~ district, and on all contracts let by them, and for all janitors, [except in courthouses of sixth- and seventh-class counties], engineers, ~~firemen~~ firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by any such municipal, county, or state governments, ~~school districts of first class, and~~ government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal, ~~except in~~ In cases of emergency when life or property is in imminent danger this subsection does not apply.

(2) For firefighters in cities of the first and second

class, a ~~work week shall be a period~~ workweek consists of a maximum of 40 hours during a 5-day week.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a 40-hour ~~work--week~~ workweek consisting of 4 consecutive 10-hour days. No employee ~~shall~~ may be required to work in excess of 8 hours in any one ~~work day~~ workday if he prefers not to.

(4) Every person, corporation, stock company, or association of persons who violates any of the provisions of this section ~~shall be~~ is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment."

Section 24. Section 39-4-108, MCA, is amended to read

"39-4-108. Railway employees. (1) On all lines of railroads or railways operated in whole or in part within this state, the time of labor of locomotive engineers, locomotive firemen, conductors, trainmen, operators, and agents acting as operators employed in running or operating the locomotive engines or trains on or over such railroads or railways in this state ~~shall~~ may not at any time exceed 12 consecutive hours or ~~to be on duty for more than~~ an

aggregate of 16 hours ~~in--the--aggregate~~ in any 24-hour period. At least 8 hours ~~shall~~ must be allowed them off duty before ~~said~~ engineers, firemen, conductors, trainmen, operators, and agents acting as operators are again ordered or required to go on duty.

(2) Nothing in this section ~~shall~~ may be construed to allow any engineer, fireman, conductor, or trainman to desert his locomotive or train in case of accident, ~~storms~~ storm, ~~wrecks~~ wreck, ~~washouts~~ washout, snow blockade, or any unavoidable delay arising from like causes or to allow ~~said~~ such engineer, fireman, conductor, or trainman to tie up any passenger or mail train between terminals.

(3) The provisions of this section ~~shall~~ do not apply to relief or wreck trains.

(4) Any railroad company or superintendent, train dispatcher, trainmaster, master mechanic, or other railroad or railway official who ~~shall--order~~ orders or require requires any locomotive engineer, locomotive fireman, conductor, trainman, operator, or agent acting as operator to labor contrary to the provisions of this section ~~shall be~~ deemed is guilty of a misdemeanor and on conviction thereof ~~shall--be--punished~~ is punishable by a fine of not less than $100 or more than $500 or by imprisonment of not less than 30 days or more than 60 days in the county jail.

(5) All railroad or railway corporations operating

lines of railroads or railways in whole or in part in this state ~~shall be~~ are liable in damages for all injuries to any person ~~or---persons~~ resulting from violations of the provisions of this section."

Section 25. Section 39-4-110, MCA, is amended to read:

"39-4-110. Sugar refineries. (1) A period of not to exceed 8 hours ~~shall constitute~~ constitutes a day's work for all persons employed in or about sugar refineries, except in a case of emergency when life and or property ~~are~~ is in danger.

(2) The provisions of this section ~~shall~~ do not apply to beet receiving station employees or superintendents, master mechanics, or beet-end, sugar-end, and Steffan house foremen.

(3) Any person, corporation, agent, manager, or employer who ~~shall violate~~ violates the provisions of this section ~~shall--be~~ is guilty of a misdemeanor and upon conviction thereof ~~shall be punished~~ is punishable by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment."

Section 26. Section 39-5-102, MCA, is amended to read:

"39-5-102. Definitions. Unless a different meaning is clearly required by the context, the following words and phrases, as ~~hereinafter~~ used in this chapter, ~~shall~~ have the

following meanings:

(1) (a) "Employment agency" is synonymous with "agency" and ~~shall mean~~ means any business in which any part of the business's gross or net income is derived from a fee received from applicants and in which any of the following activities are engaged in:

(i) the offering, promising, procuring, or attempting to procure employment for applicants; or

(ii) the giving of information regarding where and from whom employment may be obtained.

(b) In addition, the term "employment agency" ~~shall~~ mean means and ~~include~~ includes any person, bureau, organization, or school which for profit, by advertisement or otherwise, offers as one of its main objects or purposes to procure employment for any person who pays for its services or which collects tuition or charges for service of any nature where the main object of the person paying the same is to secure employment.

(c) The term "employment agency" ~~shall~~ does not include labor union organizations, temporary service contractors, proprietary schools, or the Montana state employment agency.

(2) "Temporary service contractors" ~~shall mean~~ means any person, firm, association, or corporation conducting a business which consists of employing individuals directly

for the purpose of furnishing such individuals on a part-time or temporary basis to others.

(3) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(4) "Applicant", except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(5) "Person" includes an individual, a firm, a corporation, a partnership, or an association.

(6) "Director" ~~shall mean~~ means the commissioner of the department of labor and industry."

Section 27. Section 39-5-202, MCA, is amended to read:

"39-5-202. Application for license or renewal. (1) Every applicant for an employment agency license or a renewal thereof shall file with the director a written application stating the name and address of the applicant, the street and number of the building in which the business of the employment agency is to be conducted, the name of the person who is to have the general management of the office, the name under which the business of the office is to be

carried on, and whether or not the applicant is pecuniarily interested in the business to be carried on under the license, ~~shall~~ The application must be signed by the applicant and sworn to before a notary public, and ~~shall~~ must identify anyone holding over 20% interest in the agency.

(2) If the applicant is a corporation, the application ~~shall~~ must state the names and addresses of the officers and directors of the corporation and ~~shall~~ must be signed and sworn to by the president and secretary thereof before a notary public.

(3) If the applicant is a partnership, the application ~~shall~~ must also state the names and addresses of all partners therein and ~~shall~~ must be signed and sworn to by all of them before a notary public.

(4) The application ~~shall~~ must also state whether or not the applicant ~~is~~, at the time of making the application or has at any previous time, has been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(5) All applications for employment agency licenses ~~shall~~ must be accompanied by a copy of the form of contract to be used between the agency and the applicant."

Section 28. Section 39-5-403, MCA, is amended to read:

"39-5-403. Referral of violations to prosecuting

attorneys -- restraining actions. The director may refer such evidence as may be available to him concerning violations of this chapter or of any rule adopted hereunder to the attorney general or the ~~prosecuting~~ county attorney of the county wherein the alleged violation arose who may, in his discretion, with or without such a reference, in addition to any other action he might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter."

Section 29. Section 39-5-404, MCA, is amended to read:

"39-5-404. Written assurance of discontinuance. In the enforcement of this chapter, the attorney general ~~and/or any said--prosecuting~~ or the county attorney may accept an assurance of discontinuance from any person deemed in violation of any provisions of this chapter. Any such assurance shall be in writing and shall be filed with and subject to the approval of the ~~superior~~ district court of the county in which the alleged violator resides or has his principal place of business."

Section 30. Section 39-5-405, MCA, is amended to read:

"39-5-405. Civil penalty for violating court order. Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more

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than $2,000. For the purpose of this section, the court issuing any injunction shall retain continuing jurisdiction and in such cases the attorney general ~~and/or~~ or the ~~prosecuting~~ county attorney acting in the name of the state may petition for the recovery of civil penalties."

Section 31. Section 39-6-106, MCA, is amended to read:

"39-6-106. ~~Standards for apprenticeship~~ APPRENTICESHIP agreements. ~~Standards for apprenticeship~~ APPRENTICESHIP agreements ~~are as follows~~ SHALL CONTAIN:

(1) a statement of the trade or craft to be taught and the required hours for completion of apprenticeship, which ~~shall~~ must be not less than 4,000 hours of reasonably continuous employment;

(2) a statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;

(3) a statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction ~~shall~~ must be not less than 144 hours per year;

(4) a statement that apprentices ~~shall~~ must be not less than 16 years of age;

(5) a statement of the progressively increasing scale of wages to be paid the apprentice;

(6) provision for a period of probation during which

the department of labor and industry, ~~when authorized by the department, shall be directed to~~ must terminate an apprenticeship agreement at the request in writing of any party thereto. After the probationary period, the department, ~~when authorized by the department, shall be empowered to~~ may terminate the registration of an apprentice upon agreement of the parties.

(7) provision that the services of the department may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure;

(8) provision that if an employer is unable to fulfill his obligation under the apprenticeship agreement he may transfer such obligation to another employer;

(9) such additional standards as may be prescribed in accordance with ~~the provisions of~~ this chapter."

Section 32. Section 39-31-103, MCA, is amended to read:

"39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing

authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees.

~~(2)--"Public--employee"--means--a--person-employed-by-a public-employer-in-any-capacity,-except~~ an elected ~~officials~~ official~~,--persons~~ a ~~person directly--appointed--by---the governor,~~ a ~~supervisory--employees~~ employee and ~~management officials~~ official~~,-as-defined-in-subsections--(3)--and--(4) below,-or-members-or~~ member of any ~~state-board-or-commission who--serve~~ serves ~~the-state-intermittently,-school-district clerks~~ clerk and ~~school---administrators~~ administrator~~, registered--professional-nurses~~ nurse performing ~~service-for health-care-facilities,-professional-engineers~~ engineer and engineers ~~in-training~~ engineer-in-training~~,-and-includes-any individual--whose--work-has-ceased-as-a-consequence-of-or-in connection-with--any--unfair--labor--practice--or--concerted employee-action.~~

(2) (A) "PUBLIC EMPLOYEE" MEANS:

(I) EXCEPT AS PROVIDED IN SUBSECTION (2)(B) OF THIS SECTION, A PERSON EMPLOYED BY A PUBLIC EMPLOYER IN ANY CAPACITY; AND

(II) AN INDIVIDUAL WHOSE WORK HAS CEASED AS A CONSEQUENCE OF OR IN CONNECTION WITH ANY UNFAIR LABOR PRACTICE OR CONCERTED EMPLOYEE ACTION.

(B) "PUBLIC EMPLOYEE" DOES NOT MEAN:

(I) AN ELECTED OFFICIAL;

(II) A PERSON DIRECTLY APPOINTED BY THE GOVERNOR;

(III) A SUPERVISORY EMPLOYEE, AS DEFINED IN SUBSECTION (3) OF THIS SECTION;

(IV) A MANAGEMENT OFFICIAL, AS DEFINED IN SUBSECTION (4) OF THIS SECTION;

(V) A MEMBER OF ANY STATE BOARD OR COMMISSION WHO SERVES THE STATE INTERMITTENTLY;

(VI) A SCHOOL DISTRICT CLERK;

(VII) A SCHOOL ADMINISTRATOR;

(VIII) A REGISTERED PROFESSIONAL NURSE PERFORMING SERVICE FOR A HEALTH CARE FACILITY;

(IX) A PROFESSIONAL ENGINEER; OR

(X) AN ENGINEER-IN-TRAINING.

(3) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(4) "Management ~~officials~~ official" means ~~representatives~~ a representative of management having

authority to act for the agency on any matters relating to the implementation of agency policy.

(5) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(6) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(7) "Board" means the board of personnel appeals provided for in 2-15-1705.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402.

(10) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of

whether the disputants stand in the proximate relation of employer and employee.

(11) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board."

Section 33. Section 39-31-208, MCA, is amended to read:

"39-31-208. Representation election at direction of board. (1) If the board or an agent of the board, in the hearing provided for in 39-31-207, finds that there is a question of representation, it shall direct an election by secret ballot to determine whether and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof.

(2) Only those labor organizations which have been designated by more than 10% of the employees in the unit found to be appropriate shall be placed on the ballot.

(3) The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election.

(4) Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted, the ballot

providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(5) A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative."

Section 34. Section 39-31-309, MCA, is amended to read:

"39-31-309. Factfinding proceedings. (1) The ~~fact finder~~ factfinder shall immediately establish dates and place of hearings.

(2) The public employer and the exclusive representative ~~shall be~~ are the only proper parties to factfinding proceedings.

(3) Upon request of either party ~~of~~ or the ~~fact-finder~~ factfinder, the board shall issue subpoenas for hearings conducted by the ~~fact-finder~~ factfinder. The ~~fact--finder~~ factfinder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the ~~day~~ date of appointment, the ~~fact-finder~~ factfinder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the public employer and the exclusive representative. The ~~fact-finder~~ factfinder may make this report public 5 days after it is submitted to the parties.

If the dispute is not resolved 15 days after the report is submitted to the parties, the report ~~shall~~ must be made public.

(5) The cost of factfinding proceedings ~~shall~~ must be equally borne by the board and the parties concerned.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the ~~fact-finder~~ factfinder from endeavoring to mediate the dispute in which he has been selected or appointed as ~~fact finder~~ factfinder."

Section 35. Section 39-31-401, MCA, is amended to read:

"39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201, ~~and 39-31-204 through 39-31-206, or 39-31-303~~;

(2) dominate, interfere, or assist in the formation or administration of any labor organization; ~~;~~ However however, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay; ~~;~~

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor

organization.~~;~~ However however, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, ~~as a condition of employment,~~ that an employee who is not or does not become a union member ~~shall be required, as a condition of employment,~~ to must have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues.~~;~~

(4) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative."

Section 36. Section 39-31-403, MCA, is amended to read:

"39-31-403. Remedies for unfair labor practices. Violations of the provisions of 39-31-401 or 39-31-402 are unfair labor practices remediable by the board ~~in the following manner~~ pursuant to this part."

Section 37. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the

following definitions apply:

(1) The word "administrator" refers to a person appointed by the commissioner of labor and industry to direct and administer the unemployment compensation laws and federal laws falling within the administrator's jurisdiction.

(2) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(3) "Annual total payroll" means the total of the 4 quarters of total payrolls of an employer preceding the computation date as fixed herein.

(4) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, th base period shall be that applicable under the unemployment law of the paying state.

(5) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(6) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual

files a valid claim and thereafter the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year. If such filing ~~shall--result~~ results in an overlapping of benefit years, the new benefit year ~~shall-begin-upon~~ begins on the first Sunday following the expiration of his ~~last~~ preceding benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period ~~shall-be-that~~ is the period applicable under the unemployment law of the paying state.

(7) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(8) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(9) "Contributions" means the money payments to the state unemployment compensation fund required by this chapter.

(10) "Division" means the employment security division of the department of labor and industry provided for in Title 2, chapter 15, part 17.

(11) "Employing unit" means any individual or ~~type--of~~ organization, including the state government, any of its

political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203~~,~~. ~~and--all~~ All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state ~~shall--be--deemed~~ are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit ~~shall--be~~ is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(12) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment

offices operated and maintained by the United States government or its instrumentalities as the division may approve.

(13) "Fund" means the unemployment compensation fund established by this chapter to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this chapter shall be paid.

(14) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(15) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(16) (a) "Institution of higher education", for the purposes of this part, means an ~~education~~ educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it

awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of ~~post-graduate~~ postgraduate or ~~post-doctoral~~ postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(17) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(18) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the division.

(b) The term "wages" ~~shall~~ does not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from ~~welfare~~ public assistance funds for services performed at the direction and request of such county welfare office.

(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(21) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment.

~~(22) The word "division" throughout the unemployment statutes refers to a unit of the Montana state department of labor and industry.~~

~~(23) The words "board of labor appeals" used in this chapter mean three persons appointed by the governor who are not public employees but who are attached to the Montana state department of labor and industry. The function of said board is to act in a quasi-judicial capacity for the hearing of disputes concerning the administration of~~

~~Montana's unemployment insurance laws.~~"

Section 38. Section 39-51-202, MCA, is amended to read:

"39-51-202. Employer defined. "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year exceeds the sum of $500;

(2) any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

(3) any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

(4) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of

this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

(5) any employing unit which, having become an employer under subsection (1), (2), (3), or (4) has not, under 39-51-1101 ~~or--39-51-1102~~, ceased to be an employer subject to this chapter; or

(6) for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter."

Section 39. Section 39-51-203, MCA, is amended to read:

"39-51-203. Employment defined. (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" ~~shall include~~ includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of

operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service ~~shall--be--deemed~~ is considered to be localized within a state if:

(i) the service is performed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government ~~shall--be--deemed~~ is considered to be employment subject to this chapter if the individual performing such services is a resident of this state and the division approves the election of the employing unit for whom such services are performed that the entire service of such individual ~~shall--be--deemed~~ is

considered to be employment subject to this chapter.

(4) ~~Services~~ Service performed by an individual for wages ~~shall be deemed~~ is considered to be employment subject to this chapter unless and until it is shown to the satisfaction of the division that:

(a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact;

(b) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(c) such individual is customarily engaged in an independently established trade, occupation, profession, or business.

(5) The term "employment" ~~shall include~~ includes service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. ~~Effective after July 1, 1975, the~~ The term "employment" ~~shall include~~ includes service performed after July 1, 1975, by all individuals, including without limitations those individuals who work

for the state of Montana, its university, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" ~~shall include~~ includes service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" ~~shall include~~ includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, after December 31, 1971, in the employ of an American employer, other than service which is deemed considered employment under the provisions of subsection (2) of this section or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection ~~is~~ are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(8) Agricultural labor exempted under 39-51-204 ~~shall~~ be is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays ~~$40,000~~ $20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar

year or employs ~~20~~ 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has agricultural employment, all employees are covered under the chapter regardless of the amount of money expended for agricultural purposes.

(9) Domestic service exempted under 39-51-204(1)(b) ~~shall--be~~ is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has domestic employment, all employees are covered under the chapter regardless of the amount of money expended for domestic purposes."

Section 40. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" ~~shall~~ does not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the

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crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of 18 in the employ of his father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress, provided that the division ~~is--hereby--authorized--and-directed-to~~ must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ~~10-days after--publication--thereof~~ in the ~~manner~~ prescribed in ~~39-51-302--for--general--rules~~ the Montana Administrative Procedure Act for the adoption of rules, to provide

reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such act of congress or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salesmen paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of

unemployment insurance;

(j) service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital.

(2) "Employment" ~~shall~~ does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed

minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in the employ of a school which is not an institution of higher education, prior to December 31, 1977;

(d) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(f) for a state prison or other state correctional or custodial institution by an inmate of that institution."

Section 41. Section 39-51-302, MCA, is amended to read:

"~~39-51-302. Regulations--and-general-and-special-rules~~ Adoption of rules. ~~General-and-special-rules-may-be-adopted, amended,-or-rescinded-by--the--division--only--after--public~~

~~hearing--or-opportunity-to-be-heard-thereon,-of-which-proper notice-has-been-given.-General-rules-shall-become--effective 10--days--after--filing--with--the--secretary--of--state-and publication-in-one-or-more-newspapers-of-general-circulation in-this-state.-Special-rules-shall-become-effective-10--days after--notification--to-or-mailing-to-the-last-known-address of-the-individuals-or-concerns-affected-thereby.-Regulations~~ Rules may be adopted, amended, or ~~rescinded~~ repealed by the division ~~and-shall-become-effective-in-the-manner-and-at-the time---prescribed---by---law~~ pursuant to the Montana Administrative Procedure Act."

Section 42. Section 39-51-304, MCA, is amended to read:

"39-51-304. Personnel. (1) ~~Subject-to-other-provisions of--this--chapter~~ Except as otherwise provided, the division is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this chapter. The division may delegate to any such persons such power and authority as it ~~deems~~ considers reasonable and proper for the effective administration of this chapter and may in its discretion bond any person handling money or signing checks hereunder.

~~(2)--The-division-shall-classify-positions--under--this chapter--and--shall--establish--salary-schedules-and-minimum personnel-standards-for-the--positions--so--classified.--The division--shall--provide--for-the-holding-of-examinations-to determine-the-qualifications-of-applicants-for-the-positions so-classified-and,-except-for-temporary-appointments-of--not to--exceed--6--months--in--duration,-such-personnel-shall-be appointed--on--the--basis--of--efficiency--and--fitness---as determined-in-such-examinations.~~

~~(3)~~(2) No person who is an officer or committee member of any political party organization or who holds or is a candidate for any public office shall may be appointed or employed under this chapter.

~~(4)~~(3) The division shall ~~establish-and-enforce-fair and-reasonable-regulations-for-appointments,-promotions,-and demotions-based-upon-ratings-of-efficiency-and--fitness--and for--terminations--for--cause~~ hire in accordance with merit system principles adopted by the merit system council."

Section 43. Section 39-51-309, MCA, is amended to read:

"39-51-309. Representation of division and state in court. (1) In any civil action to enforce the provisions of this chapter the division and the state may be represented by any qualified attorney who is employed by the division and is designated by it for this purpose or, at the division's or board's request, by the attorney general.

(2) All criminal actions for violation of any provision of this chapter or of any rules issued pursuant thereto shall be prosecuted by the attorney general of the state or, at his request and under his direction, by the ~~prosecuting~~ county attorney of the county wherein the crime was committed."

Section 44. Section 39-51-401, MCA, is amended to read:

"39-51-401. Unemployment compensation account -- establishment and control. There is hereby established separate and apart from all public money or funds of this state an account in the agency fund known as the unemployment compensation account, which shall be administered by the division exclusively for the purposes of this chapter. Any reference to the unemployment compensation fund in this code ~~shall--be--taken--to--mean~~ means the unemployment compensation account in the agency fund. All money in the account shall be mingled and undivided. This account shall consist of:

(1) all contributions collected under this chapter, ~~inclusive---of---voluntary---contributions--as--provided--in [87-1-109(c)(4)], R.C.M. 1947,~~ and payments made in lieu of contributions as provided in ~~39-51-1106~~ subsections (2) and (3) of 39-51-1106;

(2) interest earned upon any money in the account;

(3) any property or securities acquired through the use of money belonging to the account;

(4) all earnings of such property or securities; and

(5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended."

Section 45. Section 39-51-402, MCA, is amended to read:

"39-51-402. Unemployment compensation account -- state treasurer ex officio custodian -- accounts and deposits. (1) The state treasurer ~~shall--be~~ is the ex officio the treasurer and custodian of the unemployment compensation account and shall administer such account in accordance with the directions of the division and shall issue his warrants upon it in accordance with such regulations as the division shall prescribe. He shall maintain within the account three separate accounts:

(a) a clearing account;

(b) an unemployment trust fund account; and

(c) a benefit account.

(2) All money payable to the unemployment compensation account, upon receipt thereof by the division, ~~shall~~ must be forwarded to the treasurer who shall immediately deposit ~~them~~ it in the clearing account. Refunds payable pursuant to ~~39-51-1104, 39-51-1105,~~ 39-51-1110, ~~39-51-1301, or~~

~~39-51-1303 through 39-51-1306~~ may be paid from the clearing account upon warrants issued by the treasurer under the direction of the division. After clearance thereof, all other money in the clearing account ~~shall~~ must be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(3) The benefit account ~~shall consist~~ consists of all money requisitioned for the payment of benefits from this state's account in the unemployment trust fund.

(4) Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the division, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium ~~shall~~ may be paid out of the unemployment compensation account.

(5) The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the unemployment compensation account in an

amount fixed by the division and in a form prescribed by law or approved by the attorney general. Premiums for ~~said~~ the bond shall be paid from the unemployment compensation administration account."

Section 46. Section 39-51-1109, MCA, is amended to read:

"39-51-1109. Contribution appeals. Any person aggrieved by any decision, determination, or redetermination of the division involving contribution liability, contribution rate, application for refund, or the charging of benefit payments to employers making payment in lieu of contributions is entitled to a review by the division or its authorized representative, hereinafter referred to as a deputy. The decision of the deputy ~~shall be deemed to be~~ is considered the decision of the division. The division or the deputy conducting the review may refer the matter to an appeals referee, may decide the application for review on the basis of such facts and information as may be obtained, or may hear argument to secure further fats. After such review, notice of the decision ~~shall~~ must be given to the employing unit. Such decision made pursuant to such review ~~shall be deemed to be~~ is considered the final decision of the division unless the employing unit or any other such interested party, within 5 calendar days after delivery of such notification or within 7 calendar days after such

notification was mailed to his ~~last-known~~ last-known address, files an appeal from this decision. Such appeal will be referred to an appeals referee who shall make his decisions with respect thereto in accordance with the procedure prescribed in ~~[87-1107(e)]~~ 39-51-2403."

Section 47. Section 39-51-1201, MCA, is amended to read:

"39-51-1201. Experience rating and classification of employers. (1) The division shall for each calendar year classify employers in accordance with their actual contributions and unemployment experience and shall determine for each employer the experience rate which shall apply to him throughout the calendar year. The division shall apply such form of classification or experience rating system which is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of employment.

(2) In making such classification, the division shall take into account each of the following factors relating to the unemployment hazard shown by each employer on the basis of:

(a) number of years the employer has paid contributions;

(b) average quarterly percentage declines in total payrolls for the last 3 fiscal years ending June 30; and

(c) average annual net percentage declines in total payrolls for the last 3 fiscal years ending June 30, the computation date.

(3) Wages shall be adjusted in the determination of the annual and quarterly decrease percentages of any employer's payroll in whose establishment there was in any year in the qualifying period of such employer a stoppage of work due to a strike which caused a decrease in such employer's payroll of such magnitude that his actual quarterly and annual payroll caused by such a decrease or decreases when used with other annual and quarterly payroll decreases, if any, in his qualifying period would cause an increase in such employer's contribution rate. An employer's adjusted quarterly payroll for that quarter in which such stoppage of work existed shall be determined by multiplying each such payroll or adjusted payroll for the quarter immediately preceding the quarter in which such stoppage of work existed by the average quarterly variation ratio. The average quarterly variation ratio shall be computed by:

(a) dividing the payroll or, if adjusted, the adjusted payroll for that quarter in each of the prior years of an employer's qualifying period which corresponds to the respective quarter in which a stoppage of work due to a strike existed by the payroll or adjusted payroll for the

respective quarter immediately preceding such corresponding quarter; and

(b) totaling the ratio thus obtained and dividing by the number of such ratios."

Section 48. Section 39-51-1303, MCA, is amended to read:

"39-51-1303. Collection of unpaid contributions by civil action. (1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due ~~shall~~ must be collected by civil action in the name of the division, Montana department of labor and industry, and the employer adjudged in default shall pay the costs of such action.

(2) Civil actions brought under this section to collect contributions or interest thereon from an employer ~~shall~~ must be heard by the court at the earliest possible date and ~~shall~~ must be ARE entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law of this state.

(3) ~~Action~~ An action for the collection of contributions due ~~shall~~ must be brought within 5 years after the due date of such contributions~~, otherwise to be~~ or be IT IS barred ~~as provided in [93-2604]~~."

Section 49. Section 39-51-2104, MCA, is amended to

read:

"39-51-2104. General benefit eligibility conditions. An unemployed individual ~~shall~~--be is eligible to receive benefits for any week of total unemployment within his benefit year only if the division finds that:

(1) he has registered for work at and thereafter has continued to report at an employment office in accordance with such regulation as the division may prescribe, except that the division may, by regulation, prescribe that such types--of in cases ~~or situations with respect to~~ in which it finds ~~that--compliance--with~~ such requirements ~~would~~--be oppressive, or ~~would~~--be inconsistent with the purposes of this chapter, ~~provide--for--registration~~ an unemployed individual may register and ~~reporting~~ report for work by mail or through other governmental agencies;

(2) he has made a claim for benefits in accordance with the provisions of 39-51-2401;

(3) he is able to work and is available for work and is seeking work; provided, however, that no claimant ~~shall~~ be is considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has been offered to such claimant after the beginning of such illness or disability;

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(4) prior to any week for which he claims benefits he has been totally unemployed for a waiting period of 1 week. However, if claimant's benefit year expires during a period of compensable unemployment, claimant will continue to receive weekly benefits in a new benefit year, if otherwise eligible, without interruption to serve the waiting week for the new benefit year but will thereafter be required to serve the waiting week before receiving benefits during subsequent unemployment in the new benefit year. No week ~~shall--be~~ is counted as a week of total unemployment for the purposes of this subsection:

(a) if benefits have been paid with respect thereto;

(b) unless the individual was eligible for benefits with respect thereto;

(c) unless it occurs within the benefit year of the claimant;

(d) unless it occurs after benefits first could become payable to any individual under this chapter."

Section 50. Section 39-51-2108, MCA, is amended to read:

"39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations. Benefits based on service in employment defined in ~~39-51-203~~ subsections (5) and (6) of 39-51-203 and ~~39-51-204~~ subsections (2) and (3) ~~and [87-111(d)v-R.C.M. 1947]--shall~~

be of 39-51-204 are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research, or principal administrative capacity for an educational institution ~~shall~~ may not be paid to an individual for any week of unemployment which begins during the period between 2 successive academic years or during a similar period between 2 regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract to perform services in any such capacity for any such educational institution for both such academic years or both such terms."

Section 51. Section 39-51-2304, MCA, is amended to read:

"39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) Effective April 1, 1977, an individual ~~shall--be~~ is disqualified for benefits if he ~~failed~~ fails without good cause either to apply for available and suitable work when so directed by the employment office or the division or to accept suitable work offered to him which he is physically able and mentally qualified to perform or to return to his customary self-employment, if any, when so directed by the division.

Such disqualification ~~shall continue~~ continues for the week in which such failure ~~occurred~~ occurs and until he the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of his weekly benefit amount in 6 separate weeks subsequent to the date the act causing the disqualification occurred, with 6 weeks' reduction in benefit duration, as determined by the division, provided he has not left this work under disqualifying circumstances.

(2) In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(3) Notwithstanding any other provisions of this chapter, no work ~~shall~~ may be ~~deemed~~ considered suitable and benefits ~~shall~~ may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the

individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization."

Section 52. Section 39-51-3206, MCA, is amended to read:

"39-51-3206. Liability for wrongful or improper receipt of benefits. Any person who, by reason of the nondisclosure or misrepresentation by him or by another of a material fact, irrespective of whether such nondisclosure or misrepresentation was known or fraudulent, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case or while he was disqualified from receiving benefits shall, in the discretion of the division, either be liable to have such sum deducted from any future benefits payable to him under this chapter or shall be liable to repay to the division for the unemployment compensation fund a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this chapter for the collection of past due contributions. ~~Action~~ An action for collection of overpaid benefits ~~shall~~ must be brought within 5 years after the date

of such overpayment~~,-otherwise-to-be~~ or ~~be~~ IT IS barred as ~~provided-in-[93-2604]~~."

Section 53. Section 39-71-101, MCA, is amended to read:

"39-71-101. Short title. This chapter ~~shall--be--known~~ and may be cited as ~~the-Workmen's-Compensation-Act-or~~ the Workers' Compensation Act."

Section 54. Section 39-71-102, MCA, is amended to read:

"39-71-102. Reference to plans. Whenever compensation plan No. 1, 2, or 3 ~~or-the-safety-provisions-of-this-chapter shall-be~~ is referred to, such reference ~~shall~~ also ~~be--held to--include~~ includes all other sections which are applicable to the subject matter of such reference."

Section 55. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter ~~shall~~ have the following meanings ~~hereinafter-defined~~:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the division of employment security of the Montana department of labor and industry. It is established at the nearest whole dollar number and ~~shall~~ must be adopted by the division of workers'

compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving wife or husband;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 25 years who is a full-time student in an accredited school;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury. However ~~(however~~, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists~~]~~.

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer. Any person hauling or assisting in hauling of sugar beets or grains, in case of emergency, ~~shall--be~~ is considered engaged in casual employment.

(4) "Child" ~~shall include~~ includes a posthumous child, a dependent stepchild, a child legally adopted prior to the injury, and an illegitimate child legitimized prior to the injury.

(5) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(6) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(7) "Husband" or "widower" means only a husband or widower living with or legally entitled to be supported by the deceased at the time of her injury.

(8) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the industrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in ~~39-71-501 through 39-71-507~~ part 5 of this chapter.

(9) "Invalid" means one who is physically or mentally incapacitated.

(10) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

(11) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of

the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the division, as the case may actually be on December 31 of such current year.

(12) "Permanent partial disability" means a condition resulting from injury as defined in this chapter that results in the actual loss of earnings or earning capability less than total that exists after the injured ~~workmen~~ worker is as far restored as the permanent character of the injuries will permit.

(13) "Permanent total disability" means a condition resulting from injury as defined in this chapter that results in the loss of actual earnings or earning capability that exists after the injured workmen worker is as far restored as the permanent character of the injuries will permit and which results in the workmen worker having no reasonable prospect of finding regular employment of any kind in the normal labor market.

(14) The term "physician" ~~shall include~~ includes "surgeon" and in either case ~~shall mean~~ means one authorized

by law to practice his profession in this state.

(15) "The plant of the employer" ~~shall include~~ includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(16) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(17) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(18) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished ~~and shall embrace all safety devices and safeguards provided or prescribed by the safety provisions of the chapter for the purpose of mitigating or preventing a specific danger~~.

(19) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured ~~workman~~ worker is as far restored as the permanent character

of the injuries will permit.

(20) "Wages" means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week, and overtime is not to be considered. Sick leave benefits accrued by employees of public corporations, as defined by subsection (16) of this section, are considered wages.

(21) "Wife" or "widow" means only a wife or widow living with or legally entitled to be supported by the deceased at the time of the injury.

(22) "Year", unless otherwise specified, means calendar year."

Section 56. Section 39-71-302, MCA, is amended to read:

"39-71-302. What included in computing payroll. In computing the payroll, the entire compensation received by every ~~workman~~ worker employed under this chapter ~~shall be~~ is included, whether ~~it be~~ in the form of salary, wage, piecework, or otherwise and whether payable in money, board, or otherwise."

Section 57. Section 39-71-304, MCA, is amended to read:

"39-71-304. Books, records, and payrolls to be open to inspection -- penalty for refusal. The books, records, and payrolls of the employer pertinent to the administration of

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this chapter ~~shall~~ must always be open to inspection by the division or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of men persons employed, and such other information as may be necessary for the division and its management under this chapter. Refusal on the part of the employer to submit said books, records, and payrolls for such inspection shall subject the offending employer to a penalty of $100 for each offense, to be collected by civil action in the name of the state and paid into the state treasury."

Section 58. Section 39-71-306, MCA, is amended to read:

"39-71-306. Plan one employers and plan two insurers to file duplicate receipts paid for injuries and statements of medical expenditures. Every employer coming under the provisions of compensation plan No. 1 and every insurer coming under the provisions of compensation plan No. 2 shall, on or before the 15th day of each and every month, file with the division:

(1) duplicate receipts for all payments made during the previous month to injured workers or their beneficiaries or dependents; and

(2) statements showing the amounts expended during the previous month for medical, surgical, and hospital services for injured workers and for the burial of ~~injured~~ deceased

workers."

Section 59. Section 39-71-309, MCA, is amended to read:

"39-71-309. Hospitals to submit schedule of fees and charges -- effective period of schedule -- when to be submitted. All hospitals must submit to the division a schedule of fees and charges for treatment of injured ~~workmen~~ workers to be in effect for at least a 12-month period unless the division and the hospital agree to interim amendments of the schedule. The schedule must be submitted at least 30 days prior to its effective date and ~~shall~~ may not exceed the charges prevailing in the hospital for similar treatment of private patients."

Section 60. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation

plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under the this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3);

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership;

(e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(f) any person performing services in return for aid or sustenance only;

(g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter."

Section 61. Section 39-71-406, MCA, is amended to read:

"39-71-406. Deduction from wages of any part of premium a misdemeanor -- hospital contributions not prohibited. It ~~shall be~~ is unlawful for the employer to deduct or obtain any part of any premium required to be paid

by this chapter from the wages or earnings of his workmen ~~or any of them~~ workers, and the making or attempt to make any such deduction ~~shall be~~ is a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this chapter provided."

Section 62. Section 39-71-410, MCA, is amended to read:

"39-71-410. Employees bound by plan adopted by employer -- election not to be bound by corporate officers. (1) Every employee whose employer is bound by the provisions of this chapter ~~shall become~~ is subject to and be bound by the provisions of that plan of compensation ~~which shall have~~ been adopted by his employer, except that pursuant to such rules as the division shall from time to time promulgate and subject in all cases to the review of the division, officers of private corporations may elect not to be bound as employees under the this chapter by a written notice in the form provided by the division, served in the following manner:

(a) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering ~~said~~ the notice to the board of directors of the employer;

(b) if the employer has elected to be bound by the provisions of compensation plan No. 2, by delivering ~~said~~

the notice to the board of directors of the employer or the insurer;

(c) if the employer has elected to be bound or is bound by the provisions of compensation plan No. 3, by delivering ~~said~~ the notice to the division.

(2) The appointment or election of an officer of a corporation for the purpose of excluding an employee from coverage under the this chapter ~~shall~~ does not entitle such officer to elect not to be bound as an employee under the this chapter. In any case, the notice ~~shall~~ must be signed by the officer under oath or equivalent affirmation and is subject to the penalties for false swearing.

(3) The division shall review any election by officers of private ~~corporation's--election~~ corporations not to be bound as an employee to assure compliance with this chapter."

Section 63. Section 39-71-411, MCA, is amended to read:

"39-71-411. Provisions of chapter exclusive remedy -- nonliability of insured employer. For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under the this chapter, the provisions of the this chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers'

Compensation Act, an employer is not subject to any liability whatever for the death of or personal injury to any---employees an employee covered by the Workers' Compensation Act. The Workers' Compensation Act binds the employee himself, and in case of death binds his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer and the servants and employees of such employer and those conducting his business during liquidation, bankruptcy, or insolvency."

Section 64. Section 39-71-501, MCA, is amended to read:

"39-71-501. Definition of uninsured employer. For the purposes of ~~39-71-501 through 39-71-507~~ this part, ~~the words~~ "uninsured employer" ~~mean~~ means an employer who has not properly complied with the provisions of 39-71-401."

Section 65. Section 39-71-506, MCA, is amended to read:

"39-71-506. Collection of payments from uninsured employer by suit. If, upon demand of the division, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the sums may be collected by the division through suit. The division may settle through compromise with an uninsured employer the amount due the fund under ~~39-71-501~~

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~~through 39-71-507~~ 39-71-504."

Section 66. Section 39-71-510, MCA, is amended to read:

"39-71-510. Limitation on benefit entitlement under fund. Notwithstanding the provisions of ~~39-71-402~~, 39-71-407, ~~and 39-71-501 through 39-71-507~~ 39-71-502, and 39-71-503, injured employees or an employee's beneficiaries who elect to receive benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund ~~shall~~ must be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future."

Section 67. Section 39-71-602, MCA, is amended to read:

"39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed. No limitation of time as provided in 39-71-601 or in this chapter, known as the Workers' Compensation Act, shall run as against any injured ~~workmen~~ worker who is mentally incompetent and without a guardian or an injured minor under 18 years of age who may be without a parent or guardian. A

guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitations as provided for in 39-71-601 shall begin to run on the date of appointment of such guardian or when such minor arrives at ~~the age of~~ 18 years of age, whichever date ~~may be the~~ is earlier."

Section 68. Section 39-71-603, MCA, is amended to read:

"39-71-603. Notice of ~~claims~~ claim for injuries other than death to be submitted within sixty days -- exception -- actual notice. No ~~claims~~ claim to recover compensation under this ~~[act]~~ chapter for injuries not resulting in death ~~shall~~ may be maintained unless, within 60 days after the occurrence of the accident which is claimed to have caused the injury, notice in writing stating the name and address of the person injured, the time and place where the accident occurred, and the nature of the injury and signed by the person injured or someone in his behalf ~~shall be~~ is served upon the employer or the insurer, except as otherwise provided in 39-71-602. However, actual knowledge of such accident and injury on the part of such employer or his managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury ~~shall be~~ is equivalent to such service."

Section 69. Section 39-71-721, MCA, is amended to

read:

"39-71-721. Compensation for injury causing death. (1) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased, as the case may be, ~~shall receive~~ is entitled to the same compensation as though the death occurred immediately following the injury, but the period during which the death benefit ~~shall be~~ is paid shall be reduced by the period during or for which compensation was paid for the injury.

(2) To beneficiaries as defined in subsections (2)(a) through (2)(d) of 39-71-116, weekly compensation benefits for injury causing death ~~shall be~~ are computed at 66 2/3% of the decedent's wages. The maximum weekly compensation benefits ~~shall~~ may not exceed the state's average weekly wage. The minimum weekly compensation for death ~~shall be~~ is 50% of the state's average weekly wage, but in no event ~~shall~~ may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in subsections (2)(e) and (2)(f) of 39-71-116, weekly benefits ~~shall~~ must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation ~~shall~~ may not exceed the state's average weekly wage.

(4) If the decedent leaves no beneficiary as defined

in 39-71-116(2), a lump-sum payment of $3,000 ~~shall~~ must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies ~~or if the widow or widower remarries~~, the right of such beneficiary ~~or widow or widower~~ to compensation under this chapter ~~shall cease~~ ceases. Death benefits ~~shall~~ must be paid to a widow or widower for life or until remarriage, and in the event of remarriage, 2 years' benefits ~~shall~~ must be paid in a lump sum to the widow or widower.

(6) In all cases, benefits ~~shall~~ must be paid to beneficiaries, as defined in 39-71-116(2)."

Section 70. Section 39-71-738, MCA, is amended to read:

"39-71-738. Adjustment of compensation in case of further injuries. Should a further accident occur to a ~~workman~~ worker who is already receiving compensation hereunder or who has been previously the recipient of a payment ~~or payments~~ under this chapter, his further compensation ~~shall be~~ is adjusted according to the other provisions of this chapter and with regard to his past receipt of compensation."

Section 71. Section 39-71-739, MCA, is amended to read:

"39-71-739. Compensation in case of changes in degree of injury. If aggravation, diminution, or termination of

disability takes place or be is discovered after the rate of compensation ~~shall have been~~ is established or compensation is terminated in any case where the maximum payments for disabilities as provided in this chapter have are not been reached, adjustments may be made to meet such changed conditions by increasing, diminishing, or terminating compensation payments in accordance with the provisions of this chapter."

Section 72. Section 39-71-801, MCA, is amended to read:

"39-71-801. Occupational deafness compensated as provided in part. Regardless of other definitions of injury and time limitations imposed by this ~~[act]~~ chapter, ~~there shall be~~ compensation is awarded for occupational deafness as provided in this part."

Section 73. Section 39-71-807, MCA, is amended to read:

"39-71-807. Compensation for wage loss where employee transferred due to occupational deafness. An employee who because of occupational deafness is transferred by his employer to other employment and thereby sustains actual wage loss ~~shall~~ must be compensated at the rate provided in 39-71-703, not exceeding $3,500 in the aggregate from all employers. "Time of injury", "incurred such injury", or "date of injury" in such case ~~shall be~~ is the date of wage

loss."

Section 74. Section 39-71-813, MCA, is amended to read:

"39-71-813. Limitation provisions applicable -- when provisions begin to run. The limitation provisions in this ~~[act]--shall~~ chapter control claims arising under this part. Such provisions ~~shall~~ run from the first date upon which claim may be filed or from the date of subsequent death, provided that no claim ~~shall~~ may accrue to any dependent unless an award has been issued or liability admitted."

Section 75. Section 39-71-901, MCA, is amended to read:

"39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Vocationally handicapped" means a person who has a medically certifiable permanent physical impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

(2) "Certifying agency" means the ~~section of rehabilitation~~ division of workers' compensation.

(3) "Certificate" means documentation issued by the certifying agency to an individual who is vocationally handicapped.

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(4) "Fund" means the subsequent injury fund."

Section 76. Section 39-71-902, MCA, is amended to read:

"39-71-902. Fund to receive payment from insurer for each death under chapter -- assessment of insurers. (1) In every case of the death of an employee under this ~~[act]~~ chapter, the insurer shall pay to the fund the sum of $1,000. In addition, the division may assess every insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment ~~shall~~ must be transmitted annually to the subsequent injury fund by the employer or insurer.

(2) When, in the judgment of the administrator, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities, the administrator may at his discretion suspend or reduce further collection of assessments for a period of time determined by the administrator."

Section 77. Section 39-71-903, MCA, is amended to read:

"39-71-903. Procedure and practice. When a vocationally handicapped person receives a personal injury, the procedure and practice provided in this ~~[act]~~ chapter applies to all proceedings under this part, except where specifically otherwise provided herein."

Section 78. Section 39-71-907, MCA, is amended to read:

"39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter -- employer liability for compensation limited. A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and resulting in death or disability ~~shall~~ must be paid compensation in the manner and to the extent provided in this ~~[act]~~ chapter or, in case of his death resulting from such injury, the compensation ~~shall~~ must be paid to his beneficiaries or dependents. The liability of the employer for payment of compensation, for furnished medical care, and burial as provided in this ~~[act]--shall-be~~ chapter is limited to those benefits occurring during the period of 104 weeks after the date of injury. Thereafter, all compensation and the cost of all medical care and burial ~~shall-be~~ is the liability of the fund."

Section 79. Section 39-71-908, MCA, is amended to read:

"39-71-908. Notification of fund of its potential liability under part -- review by fund. Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the employer, carrier, or the industrial insurance fund, as the case may be, shall notify the fund

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whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may review, at reasonable times, such information as the employer, carrier, or industrial insurance fund as has regarding the accident and the nature and extent of the injury and disability."

Section 80. Section 39-71-910, MCA, is amended to read:

"39-71-910. Procedure for resolving disputes as to liability under part. (1) If an employee was employed or retained in employment under the provisions of this part and a dispute or controversy arises as to payment of benefits or the liability therefor, the division shall hold a hearing and resolve all disputes. On motion made in writing by the employer, carrier, or industrial insurance fund, the administrator shall join the fund as a party defendant.

(2) The division, within 5 days of the entry of an order joining the fund as a party defendant, shall give the fund written notice thereof not less than 20 days before the date of hearing and shall include the name of the employee, and the employer, and the date of the alleged injury or disability. The fund named as a defendant shall have 10 days after the date of notification to file objections to being named as a party defendant. On the date of the hearing at which the liability of the parties is determined, the

hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(3) At the time of the hearing, the employer and fund may appear, cross-examine witnesses, give evidence, and defend both on the issue of liability of the employer to the employee and on the issue of the liability of the fund.

(4) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability of the employer and the fund."

Section 81. Section 39-71-1001, MCA, is amended to read:

"39-71-1001. Referral of disabled workers to department of social and rehabilitation services for vocational rehabilitation. The division shall refer to the department of social and rehabilitation services workers who have become permanently disabled as the result of injuries sustained within the scope and course of employment by an employer enrolled under the Workers' Compensation Act of the state of Montana and who, in the opinion of the division, can be vocationally rehabilitated. The department of social and rehabilitation services shall provide for the vocational rehabilitation of the injured workers under the provisions

of ~~[Title--41,-chapter-8,-R.C.M.-1947]~~ Title 53, chapter 7, parts 1 and 2."

Section 82. Section 39-71-1003, MCA, is amended to read:

"39-71-1003. Eligibility for benefits under chapter not affected -- other expenses payable. The eligibility of any injured ~~workmen~~ worker to receive other benefits under the Workers' Compensation Act ~~shall~~ is in no way be affected by his entrance upon a course of vocational rehabilitation as herein provided, but he may be paid, in addition thereto, upon the certification of the ~~vocational-rehabilitation division~~ department of social and rehabilitation services from funds herein provided:

(1) his actual and necessary travel expenses from his place of residence to the place of training and return;

(2) his living expenses while in training in an amount not in excess of $50 per week; and

(3) his expenses for tuition, books, and necessary equipment in training."

Section 83. Section 39-71-2101, MCA, is amended to read:

"39-71-2101. General requirements for electing coverage under plan. An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the division of his solvency and financial ability to pay

the compensation and benefits in this chapter provided for and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, and may, by order of the division, make such payments directly to his employees as they may become entitled to receive ~~the--same~~ under the terms and conditions of this chapter."

Section 84. Section 39-71-2201, MCA, is amended to read:

"39-71-2201. Election to be bound by plan. (1) Any employer except those specified in ~~[92-206]~~ 39-71-403 may, by filing his election to become bound by compensation plan No. 2, insure his liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact such business in this state.

(2) Any employer electing to become bound by compensation plan No. 2 shall make his election on the form and in the manner prescribed by the division."

Section 85. Section 39-71-2206, MCA, is amended to read:

"39-71-2206. Deposits by insurer with division to guarantee payment of liability. (1) Before issuance of any policy by an insurer as herein authorized, such the insurer must deposit with the division bonds of the United States or the state of Montana or of any school district, county,

city, or town in the state of Montana or a corporate surety bond made out to and approved by the division in an amount not less than $5,000 or more than $100,000, as the division may determine. If any insurer fails to discharge any liability after the amount thereof ~~shall be~~ is determined by the division and within the time limited by the division, the division shall convert the bonds or such part thereof as is necessary into cash and from the proceeds liquidate such liability, and thereafter the insurer must make an additional deposit to meet any deficiency caused thereby. It is intended ~~hereby~~ to give the division the discretion in the matter of whether an insurer has failed to discharge any liability.

(2) Within 30 days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the division for the protection and guarantee of the payment of such liability in such sum as the division may direct. However, if the division ~~deems~~ considers the amount on deposit by the insurer under the provisions of subsection (1) of this section sufficient to cover all liabilities of the insurer, then no further deposit ~~shall~~ may be required.

(3) Any deposit made under the provisions of compensation plan No. 2 ~~shall~~ must be held in trust by the

division as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the division as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor by withdrawing the same or any part thereof and substituting other deposits therefor. Upon proof of the final payment of the liability for which such deposit was made, any deposit remaining ~~shall~~ must be returned to the depositor. All earnings made by such deposit ~~shall be~~ must first be applied upon any liability of the depositors, and if no such liability exists, then such earnings ~~shall~~ must upon demand be delivered to such depositor. The division and its bondsmen ~~shall be~~ are liable for the value and safekeeping of such deposit and shall at any time, upon demand of ~~its bondsmen, the~~ a depositor, ~~or the division~~, account for the same and the earnings thereof."

Section 86. Section 39-72-101, MCA, is amended to read:

"39-72-101. Short title. This chapter ~~shall be known~~ may be cited as "~~The~~ the "Occupational Disease Act of Montana"."

Section 87. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116(2).

(2) "Child" is as defined in 39-71-116(4).

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing any work for remuneration or profit. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".

(4) "Division" is as defined in 39-71-116(5).

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Husband" is as defined in 39-71-116(7).

(8) "Independent contractor" is as defined in 39-71-120.

(9) "Insurer" is as defined in 39-71-116(8). The term includes an employer who is self-insured under compensation plan No. 1.

(10) "Invalid" is as defined in 39-71-116(9).

(11) ~~The term "occupational~~ Occupational disease" ~~shall~~ mean means all diseases arising out of or contracted from

and in the course of employment.

(12) "Order" is as defined in 39-71-116(10).

(13) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(14) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO2), and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(15) "Wages" is as defined in 39-71-116(20).

(16) "Wife" is as defined in 39-71-116(21).

(17) "Year" is as defined in 39-71-116(6) and 39-71-116(22)."

Section 88. Section 39-72-307, MCA, is amended to read:

"39-72-307. Deduction from wages of any part of premium a misdemeanor -- hospital contributions not prohibited. It ~~shall be~~ is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of his workmen workers, or any of them, and the making or attempt to make

any such deduction ~~shall be~~ is a misdemeanor, except that nothing in this section ~~shall~~ may be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this chapter provided."

Section 89. Section 39-72-508, MCA, is amended to read:

"39-72-508. Death due to pneumoconiosis. The claimant must submit the evidence necessary to establish that the miner's death was due to pneumoconiosis and that the pneumoconiosis arose out of employment in coal mines. Death will be found due to a ~~respirable~~ respiratory disease when death is ascribed to a chronic dust disease or to another chronic disease of the lung. Death will not be found due to a ~~respirable~~ respiratory disease in those cases in which the disease reported does not suggest a reasonable possibility that death was in fact due to pneumoconiosis; e.g., cancer of the lung, disease due to trauma, or pulmonary emboli. However, the presumptions established in subsections (2) and (3) of 39-72-501 apply."

Section 90. Section 39-72-701, MCA, is amended to read:

"39-72-701. Compensation for total disability or death due to occupational disease other than pneumoconiosis. The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational

disease other than pneumoconiosis, or the beneficiaries and dependents of the employee in the case of death caused by an occupational disease other than pneumoconiosis, ~~shall be~~ are entitled to under this chapter shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time as is provided in cases of temporary total disability, permanent total disability, and in cases of injuries causing death under the Workers' Compensation Act ~~of the state of Montana~~."

Section 91. Section 39-72-702, MCA, is amended to read:

"39-72-702. Compensation for total disability or death due to pneumoconiosis. Benefit payments for total disability or death due to pneumoconiosis shall, for the purpose of this chapter, be made as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at the rate of $155 per month.

(2) In the case of death of a miner due to pneumoconiosis or of a miner receiving benefits under ~~this part~~ subsection (1), benefits shall be paid to the miner's surviving spouse, if any, at the rate the deceased miner would receive such benefits if totally disabled.

(3) In the case of an individual entitled to benefit payments under subsection (1) or (2) who has one or more

dependents, the benefit payments ~~shall~~ must be increased at the rate of 50% of such benefit payments if such individual has one dependent, 75% if such individual has two dependents, and 100% if such individual has three or more dependents."

Section 92. Section 39-72-708, MCA, is amended to read:

"39-72-708. Prohibiting supplementing of benefits. No person receiving compensation or benefits under ~~[71-1001 to 71-1008, inclusive]~~ ~~shall be~~ chapter 73 of this title is entitled to compensation or benefits under this chapter."

Section 93. Section 39-73-109, MCA, is amended to read:

"39-73-109. Payment of benefits to surviving spouse. (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108, the surviving spouse, as long as such spouse remains unmarried, is entitled to receive the payments granted the deceased spouse.

(2) A person who otherwise is qualified to receive payments under subsection (1) of this section but whose spouse died prior to March 14, 1974, is hereby made eligible to begin receiving one-half of those payments; provided, however, a person is not eligible for these payments if ~~her~~ such spouse's taxable income is $6,800 or more per year."

Section 94. Repealer. Sections 41-901 through 41-909, 92-613, and 92-1340, R.C.M. 1947, are repealed.

-End-

611

1. Page 48, line 21 through line 11 on page 49.
Strike: Section 41 in its entirety
renumber all subsequent sections

Please refer To Blue Bill - S. B. 208

MARCH 6, 1979
PROCEEDINGS OF THE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

The meeting was called to order at 12:30 p.m. by Chairman Williams. The secretary took roll. All members were present.

SENATE BILL 321: Senator Roskie, sponsor, said SB 321 is a very simple little one page bill. He said the bill provides that the Board of Personnel Appeals be independent of the Department of Labor and Industry. He said the Board of Personnel Appeals oversees collective bargaining, holds heardings, and makes determinations on labor matters. He said at the present time the Board is attached to the Department of Labor and Industry. He stated that there have been no problems yet, but the potential for a conflict of interest is there.

Proponent, Tom Schneider, Montana Personal Employees' Association, spoke for the bill and gave written testimony (exhibit 1).

Proponent, Glen Drake, Montana Personal Employees' Association, said the bill is nothing more than a seperation of powers.

Opponent, George Bousliman, Governor's Office, said he was speaking for the administration and they think that the present arrangement works well and that the Board of Appeals has been able to work without interference from management.

Opponent, Dave Fuller, Commissioner, Dept. of Labor and Industry, said the present arrangement works well and is cost effective. He said that any suggestion that it costs more money is untrue. He also stated that as head of the department, it would be foolish to think that he could influence a decision of the board. He said the board will find what it wants to find, not what he wants it to find.

In closing, Senator Roskie said he wanted to make it clear that he did not think the clerical pool was unworkable. He said it should be continued. He also stated that he did not believe there was improper management of funds, but the problem is, "who is who."

Rep. Ellerd asked where the bill originated. Tom Schneider said the MPEA had it drafted and they were certain it would not cost anymore money. Rep. Ellerd asked Dave Fuller if he thought it would cost more money and he said, "yes."

Rep. Porter asked Glen Drake what the identifiable problem was, and he said it was the seperation of powers.

Rep. Harper said he was interested in the realness of concern and asked Mr. Fuller if there was a potential for abuse. Mr. Fuller said there was, but the abuse could come from either side.

Rep. Stobie was excused.

SENATE BILL 208: Senator Hafferman, sponsor, said HB 208 was a code commissioner bill and introduced John Bobinski from the Code Commissioner's office who explained the bill to the committee.

Tom Dowling, said he was a proponent of the bill and offered an amendment (exhibit 3). There were no opponents. Questions were asked by the committee.

Rep. Dassinger said he thought code commissioner bills were to clean up the books and make the law more readable, and thought an amendment to a code commissioner bill inappropriate.

SENATE BILL 155: Chairman Williams had Dick Kane introduce Richard Perkins to the committee. Mr. Perkins is a compliance officer with Dept. of Labor and Industry for the federal government. He explained the federal overtime compensation law to the committee.

SENATE BILL 467: Rep. Williams said that Senator Lowe, sponsor of SB 467, was out of town and had asked that the bill be postponed until Thursday.

Meeting adjourned at 2:00 p.m.

J. Melvin Williams, Chairman

Lois South, Secretary

There were no Exhibits with this Committee's minutes for March 6th.

The Montana Historical Society Library/Archives has the original documents. Contact 406-444-2681.

MARCH 8, 1979
PROCEEDINGS OF THE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

The meeting was called to order at 12:30 p.m. by Chairman Williams. The secretary took roll. All members were present.

SENATE BILL 467: Senator Lowe, sponsor, said that this is the elevator bill. He said the state wide building code requires that elevators in public places are to be inspected by the Department of Administration. He said these elevators are already inspected by insurance companies and maintenance crews. He said SB 467 would allow for inspections by certified insurance companies and maintenance companies. The companies would be certified by the Department of Administration and would be required to make reports to the department.

The following spoke in favor of SB 467 and gave written testimony:
Chris Johansen, Montana Grain Elevator Association-Montana Farmers' Union (exhibit 1).
Leonard Ober, Shodair Hospital, (exhibit 2).

Chad Smith, Montana Hospital Association, said elevators are under contract with maintenance companies and are inspected by them. They are also inspected by insurance companies, and by the state. He said such inspections are redundant and unnecessary. He said the inspectors should be certified by the state to determine that they are competent and he strongly supports the bill.

Rep. Fagg spoke in favor of the bill. He said it is a necessary bill and he knows of no elevator that isn't operated without a maintenance contract.

There were no opponents.

Senator Lowe said they are not trying to avoid safety, but felt there are other people who are more competent to do the inspections than the state.

EXECUTIVE SESSION

SENATE BILL 467: It was moved by Rep. Fagg that SB 467 BE CONCURRED I Motion carried 16-1. Rep. Menahan voted no.

HOUSE BILL 323: It was moved by Rep. Fagg to TABLE HB 323. Motion carried 16-1. Rep. Harrington voted no.

SENATE BILL 321: It was moved by Rep. O'Connell that SB 321 BE CONCURRED IN. Motion carried 15-2. Reps. Harrington and Dassinger voted no.

SENATE BILL 208: Rep. Dassinger made a motion that the committee DO NOT ACCEPT the amendments to SB 208. Motion failed 9-7. Reps. Dassinger, Dozier, Harrington, Manning Menahan, Pavlovich, and Teague voted yes. Rep. Ellerd made a motion that the committe reverse their vote on the amendments. Motion carried 9-7. Reps. Dassinger, Dozier,

Harrington, Manning, Menahan, Pavlovich, and Teague voted no. A motion was made by Rep. Fagg that SB 208 BE CONCURRED IN. Rep. Harrington made a substitute motion that SB 208 NOT BE CONCURRED IN. Rep. O'Connell made a motion to all motions pending to reconsider their action on the amendments. It was moved by Rep. Williams that the amendments to SB 208 NOT BE CONCURRED IN. Motion carried 12-4. Reps. Seifert, Underdal, Ellerd and Porter voted no. It was moved by Rep. Harrington that SB 208 BE CONCURRED IN as is. Motion carried 14-2. Reps. Porter and Ellerd voted no.

SENATE BILL 280: It was moved by Rep. Menahan that SB 280 NOT BE CONCURRED IN. Rep. Harrington made a substitute motion to TABLE SB 280. Rep. Ellerd said he objected to tabling the bill and said he would bring it out on the house floor.

Rep. Harper arrived.

Rep. Stobie made a motion to all motions pending that SB 280 BE CONCURRED IN. There was discussion among the committee members. Rep. Williams said a motion to TABLE in nondebatable. The committee voted on the motion to TABLE SB 280. Motion carried 9-8. Reps. Ellerd, Fagg, Harper, Porter, Seifert, Stobie, Wyrick, and Underdal voted no.

Rep. Ellerd was excused.

SENATE BILL 155: Rep. O'Connell presented amendments to SB 155 (exhibit 3) and moved that they DO PASS. Motion carried 9-8. Reps. Williams, Fagg, Porter, Seifert, Stobie, Underdal, Wyrick, and Ellerd voted no. Rep. O'Connell moved that SB 155 BE CONCURRED IN. Motion carried 11-6. Reps. Ellerd, Fagg, Porter, Seifert, Underdal, and Wyrick voted no.

Meeting adjourned at 2:00 p.m.

J. Melvin Williams

J. Melvin Williams, Chairman

Lois South

Lois South, Secretary

HOUSE OF REPRESENTATIVES
March 12, 1979

Committee of the Whole amendments to Senate Bill 208, third reading copy, as follows:

1. Page 11, line 20 through line 21 on page 12.
Strike: Section 20 in its entirety
Renumber: subsequent sections

AND AS AMENDED,
BE CONCURRED IN

SENATE BILL NO. 208

INTRODUCED BY HAFFERMAN, LOWE

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO LABOR; ENACTING SECTION 39-1-101, MCA; AND REPEALING SECTIONS 41-901 THROUGH 41-909, 92-613, AND 92-1340, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. 39-1-101. Definitions. As used in this chapter, unless the context requires otherwise the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry as provided for in 2-15-1701.

(2) "Department" means the department of labor and industry as provided for in 2-15-1701.

Section 2. Section 39-1-102, MCA, is amended to read:

"39-1-102. Duties of department. The department of ~~labor and industry~~ shall ~~be charged with the duty of~~ enforcing enforce all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, and all laws relating to child labor ~~regulating~~ which regulate the employment of children in any manner, and to shall administer the laws of the state relating to free employment offices, and all other state labor laws ~~enacted by legislation~~."

Section 3. Section 39-2-103, MCA, is amended to read:

"39-2-103. Confidential employment. The obligations peculiar to confidential employments are defined in the ~~chapter on trusts~~ laws relating to trusts and fiduciary relationships."

Section 4. Section 39-2-503, MCA, is amended to read:

"39-2-503. Termination at will. An employment having no specified term may be terminated at the will of either party on notice to the other, except where otherwise provided by this chapter, 28-10-301 through 28-10-303, 28-10-502, and 30-11-601 through 30-11-605, and ~~except as provided in~~ 39-2-302."

Section 5. Section 39-2-703, MCA, is amended to read:

"39-2-703. Liability of railway corporation for negligence of fellow servants. (1) Every person or corporation operating a railway or railroad in this state ~~shall be~~ is liable for all damages sustained by any employee of such person or corporation in consequence of the neglect of any other employee ~~or employees~~ thereof or by the mismanagement of any other employee ~~or employees~~ thereof and in consequence of the willful wrongs, whether of commission or omission, of any other employee ~~or employees~~ thereof when

REFERENCE BILL

such neglect, mismanagement, or wrongs are in any manner connected with the use and operation of any railway or railroad on or about which ~~they shall be~~ he is employed, and ~~no~~ No contract which restricts such liability ~~shall be~~ is legal or binding.

(2) In case of the death of any such employee in consequence of any injury or damage so sustained, the right of action provided by subsection (1) ~~of this section~~ shall survive and may be prosecuted and maintained by his heirs or personal representatives.

(3) Every railway corporation doing business in this state, including electric railway corporations, ~~shall be~~ is liable for ~~all~~ damages sustained by an employee thereof within this state ~~without contributing negligence on his part~~, subject to the provisions of 27-1-702, when such damages are caused by the negligence of any train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, motorman, or of any other employee who has superintendence of any stationary or hand signal.

(4) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into, either before or after the injury, between the person injured and any of the employers named in subsection (3) ~~of this section shall constitute any~~ is a bar or defense

to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act."

Section 6. Section 39-2-704, MCA, is amended to read:

"39-2-704. Liability of mining company for negligence of fellow servants. (1) Every company, corporation, or individual, operating any mine, smelter, or mill for the refining of ores, ~~shall be~~ is liable for any damages sustained by any ~~employees~~ employee thereof within this state ~~without contributing negligence on his part~~, subject to the provisions of 27-1-702, when such damage is caused by the negligence of any superintendent, foreman, shift boss, hoisting or other engineer, or craneman.

(2) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into before the injury between the person injured and any of the employers named in this section ~~shall constitute any~~ is a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

(3) In case of the death of any such ~~employees~~ employee in consequence of any injury or damages so sustained, the right of action ~~shall survive~~ survives and may be prosecuted and maintained by ~~their~~ his heirs or personal representatives."

Section 7. Section 39-2-803, MCA, is amended to read:

"39-2-803. Blacklisting prohibited. If any company or corporation in this state authorizes or allows any of its agents to blacklist or any person does blacklist any discharged employee or attempts by word or writing or any other means whatever to prevent any discharged employee or any employee who may have voluntarily left ~~said~~ the company's service from obtaining employment with another person, except as provided for in 39-2-802, such company or corporation or person is liable in punitive damages to such ~~employees~~ employee so prevented from obtaining employment, to be recovered by him in a civil action, and is also punishable as provided in 39-2-804."

Section 8. Section 39-3-104, MCA, is amended to read:

"39-3-104. Equal pay for women for equivalent service. (1) It ~~shall be~~ is unlawful for ~~any person, firm,~~ the state, or ~~any~~ county, municipal entity, or school district, public or private corporation, person, or firm to employ ~~any~~ women or women in any occupation ~~or setting~~ within the state of Montana for ~~salaries, wages, or~~ compensation ~~which are~~ less than that paid to men for equivalent service or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of employment of any kind or description.

(2) ~~Any person, firm~~ If the state, or ~~any~~ county,

municipal entity, or school district, ~~officers or~~ public or private corporation, ~~violating~~ person, or firm violates any of the provisions of subsection (1) ~~of this section shall be~~ deemed it is guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 or more than $500 for each offense."

Section 9. Section 39-3-202, MCA, is amended to read:

"39-3-202. Rulemaking power of commissioner. The commissioner is authorized to issue, amend, and enforce rules for the purpose of carrying out the provisions of the ~~[act]~~ this part."

Section 10. Section 39-3-203, MCA, is amended to read:

"39-3-203. Employer to notify employee on written demand as to rate of wages and date of paydays. (1) Each employer or an authorized representative of the employer shall, on written demand, prior to the commencing of work, notify each employee as to the rate of wages to be paid, whether by the hour, day, week, month, or ~~yearly basis~~ year, and date of paydays. Such notification ~~shall~~ must be in writing to each employee or the by posting of notice in a conspicuous place.

(2) The provisions of this ~~[section] and 39-3-204~~ ~~shall~~ do not apply ~~in respect~~ to an employer who has entered into a signed collective bargaining agreement, when such agreement contains conditions of employment, wages to be

received, and hours to be worked, or to employers engaged in agriculture or stockraising; provided, however, such employers shall ~~conform~~ comply with the provisions of 39-3-205."

Section 11. Section 39-3-204, MCA, is amended to read:

"39-3-204. Payment of wages generally. (1) Every employer of labor in the state of Montana shall pay to each ~~of his employees~~ employee the wages earned by such ~~employees~~ employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value thereof, and no person for whom labor has been performed ~~shall~~ may withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the same become are due and payable. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever such deductions are a part of the conditions of employment, or other deductions provided for by law.

(2) If at such time of payment of wages any employee ~~shall be~~ is absent from the regular place of labor, he ~~shall~~ be is entitled to such payment at any time thereafter.

(3) Provisions of this ~~section~~ ~~and 39-3-203~~ ~~shall~~ do not apply to any professional, supervisory, or technical ~~employees~~ employee who by custom ~~receive their~~ receives his wages earned at least once monthly."

Section 12. Section 39-3-208, MCA, is amended to read:

"39-3-208. Contracts in violation of part void. Any contract or agreement made between any person, partnership, or corporation and any ~~parties~~ party in his, or its, ~~or their~~ employ ~~whose provision shall be in violation, evasion~~ the provisions of which violate, evade, or ~~circumvention of~~ circumvent this part ~~shall be~~ is unlawful and void, but such employee may sue to recover his wages earned, together with ~~such~~ the 5% penalty specified in 39-3-206 or separately to recover the penalty if the wages have been paid."

Section 13. Section 39-3-210, MCA, is amended to read:

"39-3-210. Investigative powers of commissioner. (1) The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as which they may deem consider appropriate to determine whether any person has violated any provision of this ~~act~~ part or any rule issued hereunder or which may aid in the enforcement of the provisions of this ~~act~~ part.

(2) The commissioner or his authorized representatives ~~shall have power to~~ may administer oaths and examine witnesses under oath; issue subpoenas; compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony; and take depositions and affidavits in any proceeding before the

commissioner."

Section 14. Section 39-3-211, MCA, is amended to read:

"39-3-211. Commissioner to take wage assignments. Whenever the commissioner determines that one or more employees have claims for unpaid wages, he shall, upon the written request of the employee, take an assignment of the claim in trust for such employee and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this ~~fact~~ part. With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this section."

Section 15. Section 39-3-214, MCA, is amended to read:

"39-3-214. Court costs and attorneys' fees. (1) Whenever it ~~shall become~~ is necessary for the employee to enter or maintain a suit at law for the recovery or collection of wages due as provided for by this part, ~~then~~ such a resulting judgment ~~shall~~ must include a reasonable attorney's fee in favor of the successful party, to be taxed as part of the costs in the case.

(2) Any judgment for the plaintiff in a proceeding pursuant to this ~~fact~~--~~shall~~ part must include all costs reasonably incurred in connection with the proceeding, including attorneys' fees.

(3) If the proceeding is maintained by the commissioner, no court costs or fees ~~shall be~~ are required

of him nor ~~shall he be~~ is he required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding."

Section 16. Section 39-3-501, MCA, is amended to read:

"39-3-501. Certain laws extended to certain employers in mineral and oil industry. For the purposes of this part, all the provisions of ~~[41-1301 to 41-1311] shall~~ part 2 of this chapter extend to and govern every person, firm, partnership, or corporation engaged in the business of extracting or of extracting and refining or reducing metals and minerals or mining for coal or drilling for oil, save and except such persons, firms, partnerships, or corporations as have a free and unencumbered title to not less than one-half the fee of the property being worked. For this purpose, an outstanding unpaid or unredeemed tax sale certificate ~~shall~~ is not be considered an encumbrance."

Section 17. Section 39-3-504, MCA, is amended to read:

"39-3-504. Report of violations directly to county attorney by ~~employees~~ employee. Any ~~employees~~ employee may make complaint ~~direct~~ directly to the county attorney relative to any violation of this part, ~~39-3-1041, part 8 of chapter 2,~~ or part 2 of this chapter."

Section 18. Section 39-3-505, MCA, is amended to read:

"39-3-505. County attorney to notify commissioner of ~~violations~~ violation reported directly by employees

employee. The county attorney of the county shall promptly notify the commissioner of labor and industry of any complaint made by any employee relative to the violation of any of the provisions of this part, 39-3-104, part 8 of chapter 2, or part 2 of this chapter and shall in writing keep said the commissioner advised of each step in any proceeding taken by said the county attorney thereunder."

Section 19. Section 39-3-506, MCA, is amended to read:

"39-3-506. County attorney to file complaint in district court on belief of violation. If said a county attorney believes after receiving said information that the provisions of this part, 39-3-104, part 8 of chapter 2, or part 2 of this chapter have been violated and that such violation or violations was or were willful or that the financial condition of the employer is such as to endanger employees in receiving prompt payment or collection of wages, it shall be his duty to he shall file the A complaint aforesaid in said district court. All proceedings upon such complaint shall must be promptly prosecuted."

Section 20. Section 39-3-604, MCA, is amended to read:

"39-3-604. Bond -- to be filed by lessee -- bond requirements. (1) Every person who leases from another person premises for the purpose of conducting therein a business as a restaurant, bar, or tavern is hereby required to file a bond equal to at least double the amount of the projected semimonthly payroll with the commissioner of labor and industry. Said This bond must at all times be kept in full force and effect and any cancellation or revocation thereof or withdrawal of the sureties therefrom shall automatically revoke and suspend the certificate issued to the lessee of this part until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided.

(2) The bond and affidavit required by subsection (1) of this section shall must be filed with the commissioner of labor and industry. The state of Montana shall must be named as the obligee therein, with good and sufficient sureties to be approved by the attorney general.

(3) Such bond shall must be conditioned to assure that in any lease transaction of the type referred to in 39-3-608 the persons who perform labor or other personal services for the lessee are guaranteed their wages in the event the lessee ceases operation of the business for any reason and is unable to pay the wages due and owing the employees and to assure payment due the division of employment security as a result of payroll taxes."

Section 20. Section 39-4-102, MCA, is amended to read:

"39-4-102. Drivers and attendants of motor buses. (1) Drivers or attendants of motor buses employed in the state shall may not be employed for more than 8 hours in the any

24-hour period. Drivers or attendants of motor buses ~~shall~~ must be allowed a rest of at least 12 hours between the completion of their services in any 24-hour period and the beginning of their services in the next succeeding 24-hour period. In computing the number of hours of employment made by the provisions of this section, evidence may be introduced showing that part of ~~said~~ such time ~~shall be~~ is consumed prior to entry within the state.

(2) The provisions of this section ~~shall~~ do not be effective apply when life is in danger ~~of destruction~~ or ~~in case of danger of~~ property is in imminent danger of destruction; or in case of delay due to accident or impassable impassable roads, abnormal road conditions, or snow blockades; or ~~shall not affect the delay of~~ when mails for ~~said~~ the drivers or attendants are delayed.

(3) ~~Attendants~~ "Attendant", for the purpose of this section, are is defined as any employee engaged for a portion of ~~the 24-hour period in~~ a day driving or repairing a motor bus and who is required to remain on ~~said~~ the vehicle as a relief driver or mechanic for time in excess of the 8-hour period ~~of~~ for which he ~~shall be~~ is rightly employed.

(4) Any employer or supervisor in charge of ~~employee~~ employees who ~~shall require~~ requires a driver or attendant as above defined to labor contrary to the provisions of this

section ~~shall be declared~~ is guilty of a misdemeanor and upon conviction ~~shall be punished~~ is punishable by a fine of not less than $100 or more than $600 or by imprisonment of not less than 30 days or more than 7 months or both such fine and imprisonment.

(5) All motor bus companies operating lines in this state ~~shall be~~ are liable in damage for all injuries to the person ~~or persons~~ resulting ~~in~~ from the violation of the provisions of ~~said~~ this section."

Section 21. Section 39-4-103, MCA, is amended to read:

"39-4-103. Underground miners and smeltermen. (1) The period of employment of ~~workingmen~~ workers in all underground mines or workings, including railroad or other tunnels, ~~shall be~~ is 8 hours per day, except in cases of emergency where when life and property are in imminent danger.

(2) The period of employment of ~~workingmen~~ workers in smelters, ~~stamp mills~~ stamp mills, sampling works, concentrators, and all other institutions for the reduction of ores and refining of ores or metals ~~shall be~~ is 8 hours per day, except in cases of emergency where life or property is in imminent danger.

(3) Any ~~person or persons, body corporate~~ corporation, agent, manager, or employer who ~~shall violate~~ violates any of the provisions of this section ~~shall be~~ is guilty of a

misdemeanor and upon conviction thereof for each offense be is subject to a fine of not less than $100 or more than $600 or by imprisonment in the county jail for a period of not less than 1 month or more than 7 months or by both such fine and imprisonment."

Section 22. Section 39-4-107, MCA, is amended to read:

"39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours ~~shall constitute~~ constitutes a day's work in all works and undertakings carried on or aided by any municipal, or county government, or the state government, or a first-class school ~~districts~~ district, and on all contracts let by them, and for all janitors, (except in courthouses of sixth- and seventh-class counties), engineers, ~~firemen~~ firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by any such municipal, county, or state governments, ~~school--districts--of--first--class---and~~ government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal, ~~except in~~ in cases of emergency when life or property is in imminent danger this subsection does not apply.

(2) For firefighters in cities of the first and second

class, a ~~work-week shall be a period~~ workweek consists of a maximum of 40 hours during a 5-day week.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a 40-hour ~~work--week~~ workweek consisting of 4 consecutive 10-hour days. No employee ~~shall~~ may be required to work in excess of 8 hours in any one work ~~day~~ workday if he prefers not to.

(4) Every person, corporation, stock company, or association of persons who violates any of the provisions of this section ~~shall--be~~ is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment."

Section 23. Section 39-4-108, MCA, is amended to read:

"39-4-108. Railway employees. (1) On all lines of railroads or railways operated in whole or in part within this state, the time of labor of locomotive engineers, locomotive firemen, conductors, trainmen, operators, and agents acting as operators employed in running or operating the locomotive engines or trains on or over such railroads or railways in this state ~~shall~~ may not at any time exceed 12 consecutive hours or ~~to--be--on-duty-for-more-than~~ an

aggregate of 16 hours ~~in the aggregate~~ in any 24-hour period. At least 8 hours ~~shall~~ must be allowed them off duty before ~~said~~ engineers, firemen, conductors, trainmen, operators, and agents acting as operators are again ordered or required to go on duty.

(2) Nothing in this section ~~shall~~ may be construed to allow any engineer, fireman, conductor, or trainman to desert his locomotive or train in case of accident, ~~storms~~ storm, wrecks wreck, washouts washout, snow blockade, or any unavoidable delay arising from like causes or to allow ~~said~~ such engineer, fireman, conductor, or trainman to tie up any passenger or mail train between terminals.

(3) The provisions of this section ~~shall~~ do not apply to relief or wreck trains.

(4) Any railroad company or superintendent, train dispatcher, trainmaster, master mechanic, or other railroad or railway official who ~~shall order~~ orders or require requires any locomotive engineer, locomotive fireman, conductor, trainman, operator, or agent acting as operator to labor contrary to the provisions of this section ~~shall be~~ deemed is guilty of a misdemeanor and on conviction thereof ~~shall be punished~~ is punishable by a fine of not less than $100 or more than $500 or by imprisonment of not less than 30 days or more than 60 days in the county jail.

(5) All railroad or railway corporations operating

lines of railroads or railways in whole or in part in this state ~~shall be~~ are liable in damages for all injuries to any person ~~or persons~~ resulting from violations of the provisions of this section."

Section 24. Section 39-4-110, MCA, is amended to read:

"39-4-110. Sugar refineries. (1) A period of not to exceed 8 hours ~~shall constitute~~ constitutes a day's work for all persons employed in or about sugar refineries, except in a case of emergency when life and or property ~~are~~ is in danger.

(2) The provisions of this section ~~shall~~ do not apply to beet receiving station employees or superintendents, master mechanics, or beet-end, sugar-end, and Steffan house foremen.

(3) Any person, corporation, agent, manager, or employer who ~~shall violate~~ violates the provisions of this section ~~shall be~~ is guilty of a misdemeanor and upon conviction thereof ~~shall be punished~~ is punishable by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment."

Section 25. Section 39-5-102, MCA, is amended to read:

"39-5-102. Definitions. Unless a different meaning is clearly required by the context, the following words and phrases, as ~~hereinafter~~ used in this chapter, ~~shall~~ have the

following meanings:

(1) (a) "Employment agency" is synonymous with "agency" and ~~shall mean~~ means any business in which any part of the business's gross or net income is derived from a fee received from applicants and in which any of the following activities are engaged in:

(i) the offering, promising, procuring, or attempting to procure employment for applicants; or

(ii) the giving of information regarding where and from whom employment may be obtained.

(b) In addition, the term "employment agency" ~~shall~~ mean means and ~~include~~ includes any person, bureau, organization, or school which for profit, by advertisement or otherwise, offers as one of its main objects or purposes to procure employment for any person who pays for its services or which collects tuition or charges for service of any nature where the main object of the person paying the same is to secure employment.

(c) The term "employment agency" ~~shall~~ does not include labor union organizations, temporary service contractors, proprietary schools, or the Montana state employment agency.

(2) "Temporary service contractors" ~~shall mean~~ means any person, firm, association, or corporation conducting a business which consists of employing individuals directly

for the purpose of furnishing such individuals on a part-time or temporary basis to others.

(3) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(4) "Applicant", except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(5) "Person" includes an individual, a firm, a corporation, a partnership, or an association.

(6) "Director" ~~shall mean~~ means the commissioner of the department of labor and industry."

Section 26. Section 39-5-202, MCA, is amended to read:

"39-5-202. Application for license or renewal. (1) Every applicant for an employment agency license or a renewal thereof shall file with the director a written application stating the name and address of the applicant, the street and number of the building in which the business of the employment agency is to be conducted, the name of the person who is to have the general management of the office, the name under which the business of the office is to be

carried on, and whether or not the applicant is pecuniarily interested in the business to be carried on under the license, ~~shall~~ The application must be signed by the applicant and sworn to before a notary public, and ~~shall~~ must identify anyone holding over 20% interest in the agency.

(2) If the applicant is a corporation, the application ~~shall~~ must state the names and addresses of the officers and directors of the corporation and ~~shall~~ must be signed and sworn to by the president and secretary thereof before a notary public.

(3) If the applicant is a partnership, the application ~~shall~~ must also state the names and addresses of all partners therein and ~~shall~~ must be signed and sworn to by all of them before a notary public.

(4) The application ~~shall~~ must also state whether or not the applicant ~~is~~, at the time of making the application or has at any previous time, has been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(5) All applications for employment agency licenses ~~shall~~ must be accompanied by a copy of the form of contract to be used between the agency and the applicant."

Section 27. Section 39-5-403, MCA, is amended to read:

"39-5-403. Referral of violations to prosecuting

attorneys -- restraining actions. The director may refer such evidence as may be available to him concerning violations of this chapter or of any rule adopted hereunder to the attorney general or the prosecuting county attorney of the county wherein the alleged violation arose who may, in his discretion, with or without such a reference, in addition to any other action he might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter."

Section 28. Section 39-5-404, MCA, is amended to read:

"39-5-404. Written assurance of discontinuance. In the enforcement of this chapter, the attorney general ~~and/or any said prosecuting~~ or the county attorney may accept an assurance of discontinuance from any person deemed in violation of any provisions of this chapter. Any such assurance shall be in writing and shall be filed with and subject to the approval of the ~~superior~~ district court of the county in which the alleged violator resides or has his principal place of business."

Section 29. Section 39-5-405, MCA, is amended to read:

"39-5-405. Civil penalty for violating court order. Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more

than $2,000. For the purpose of this section, the court issuing any injunction shall retain continuing jurisdiction and in such cases the attorney general ~~and/or~~ or the ~~prosecuting~~ county attorney acting in the name of the state may petition for the recovery of civil penalties."

Section 30. Section 39-6-106, MCA, is amended to read:

"39-6-106. ~~Standards for apprenticeship~~ APPRENTICESHIP agreements. ~~Standards for apprenticeship~~ APPRENTICESHIP agreements ~~are as follows~~ SHALL CONTAIN:

(1) a statement of the trade or craft to be taught and the required hours for completion of apprenticeship, which ~~shall~~ must be not less than 4,000 hours of reasonably continuous employment;

(2) a statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;

(3) a statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction ~~shall~~ must be not less than 144 hours per year;

(4) a statement that apprentices ~~shall~~ must be not less than 16 years of age;

(5) a statement of the progressively increasing scale of wages to be paid the apprentice;

(6) provision for a period of probation during which

the department of labor and industry, ~~when authorized by the department, shall be directed to~~ must terminate an apprenticeship agreement at the request in writing of any party thereto. After the probationary period, the department, ~~when authorized by the department, shall be empowered to~~ may terminate the registration of an apprentice upon agreement of the parties.

(7) provision that the services of the department may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure;

(8) provision that if an employer is unable to fulfill his obligation under the apprenticeship agreement he may transfer such obligation to another employer;

(9) such additional standards as may be prescribed in accordance with ~~the provisions of~~ this chapter."

Section 31. Section 39-31-103, MCA, is amended to read:

"39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing

authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees.

~~(2)--"Public employee" means a person employed by a public employer in any capacity, except an elected officials officials, persons a person directly appointed by the governor, a supervisory employees employee and management officials official, as defined in subsections (3) and (4) below, or members or member of any state board or commission who serve serves the state intermittently, school district clerks clerk and school administrators administrator, registered professional nurses nurse performing service for health care facilities, professional engineers engineer and engineers in training engineer-in-training, and includes any individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.~~

(2) (A) "PUBLIC EMPLOYEE" MEANS:

(I) EXCEPT AS PROVIDED IN SUBSECTION (2)(B) OF THIS SECTION, A PERSON EMPLOYED BY A PUBLIC EMPLOYER IN ANY CAPACITY; AND

(II) AN INDIVIDUAL WHOSE WORK HAS CEASED AS A CONSEQUENCE OF OR IN CONNECTION WITH ANY UNFAIR LABOR PRACTICE OR CONCERTED EMPLOYEE ACTION.

(B) "PUBLIC EMPLOYEE" DOES NOT MEAN:

(I) AN ELECTED OFFICIAL;

(II) A PERSON DIRECTLY APPOINTED BY THE GOVERNOR;

(III) A SUPERVISORY EMPLOYEE, AS DEFINED IN SUBSECTION (3) OF THIS SECTION;

(IV) A MANAGEMENT OFFICIAL, AS DEFINED IN SUBSECTION (4) OF THIS SECTION;

(V) A MEMBER OF ANY STATE BOARD OR COMMISSION WHO SERVES THE STATE INTERMITTENTLY;

(VI) A SCHOOL DISTRICT CLERK;

(VII) A SCHOOL ADMINISTRATOR;

(VIII) A REGISTERED PROFESSIONAL NURSE PERFORMING SERVICE FOR A HEALTH CARE FACILITY;

(IX) A PROFESSIONAL ENGINEER; OR

(X) AN ENGINEER-IN-TRAINING.

(3) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(4) "Management officials official" means representatives a representative of management having

authority to act for the agency on any matters relating to the implementation of agency policy.

(5) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(6) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(7) "Board" means the board of personnel appeals provided for in 2-15-1705.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402.

(10) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of

whether the disputants stand in the proximate relation of employer and employee.

(11) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board."

Section 32. Section 39-31-208, MCA, is amended to read:

"39-31-208. Representation election at direction of board. (1) If the board or an agent of the board, in the hearing provided for in 39-31-207, finds that there is a question of representation, it shall direct an election by secret ballot to determine whether and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof.

(2) Only those labor organizations which have been designated by more than 10% of the employees in the unit found to be appropriate shall be placed on the ballot.

(3) The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election.

(4) Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted, the ballot

providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(5) A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative."

Section 33. Section 39-31-309, MCA, is amended to read:

"39-31-309. Factfinding proceedings. (1) The ~~fact finder~~ factfinder shall immediately establish dates and place of hearings.

(2) The public employer and the exclusive representative ~~shall--be~~ are the only proper parties to factfinding proceedings.

(3) Upon request of either party of or the ~~fact-finder~~ factfinder, the board shall issue subpoenas for hearings conducted by the ~~fact--finder~~ factfinder. The ~~fact-finder~~ factfinder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the ~~day~~ date of appointment, the ~~fact--finder~~ factfinder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the public employer and the exclusive representative. The ~~fact--finder~~ factfinder may make this report public 5 days after it is submitted to the parties.

If the dispute is not resolved 15 days after the report is submitted to the parties, the report ~~shall~~ must be made public.

(5) The cost of factfinding proceedings ~~shall~~ must be equally borne by the board and the parties concerned.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the ~~fact--finder~~ factfinder from endeavoring to mediate the dispute in which he has been selected or appointed as ~~fact finder~~ factfinder."

Section 34. Section 39-31-401, MCA, is amended to read:

"39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201; ~~and 39-31-204 through 39-31-206, or 39-31-303~~;

(2) dominate, interfere, or assist in the formation or administration of any labor organization; ~~;~~ However ~~however~~, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay; ~~;~~

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor

organizations. However however, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, ~~as a condition of employment,~~ that an employee who is not or does not become a union member ~~shall--be-required,-as-a-condition-of-employment,~~ to must have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues.

(4) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative."

Section 35. Section 39-31-403, MCA, is amended to read:

"39-31-403. Remedies for unfair labor practices. Violations of the provisions of 39-31-401 or 39-31-402 are unfair labor practices remediable by the board in--the ~~following-manner~~ pursuant to this part."

Section 36. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the

following definitions apply:

(1) The word "administrator" refers to a person appointed by the commissioner of labor and industry to direct and administer the unemployment compensation laws and federal laws falling within the administrator's jurisdiction.

(2) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(3) "Annual total payroll" means the total of the 4 quarters of total payrolls of an employer preceding the computation date as fixed herein.

(4) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(5) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(6) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual

files a valid claim and thereafter the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year. If such filing ~~shall result~~ results in an overlapping of benefit years, the new benefit year ~~shall begin upon~~ begins on the first Sunday following the expiration of his ~~last~~ preceding benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period ~~shall be that~~ is the period applicable under the unemployment law of the paying state.

(7) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(8) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(9) "Contributions" means the money payments to the state unemployment compensation fund required by this chapter.

(10) "Division" means the employment security division of the department of labor and industry provided for in Title 2, chapter 15, part 17.

(11) "Employing unit" means any individual or ~~type of~~ organization, including the state government, any of its

political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203~~,~~ ~~and~~ ~~all~~ All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state ~~shall be deemed~~ are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit ~~shall be~~ is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(12) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment

offices operated and maintained by the United States government or its instrumentalities as the division may approve.

(13) "Fund" means the unemployment compensation fund established by this chapter to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this chapter shall be paid.

(14) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(15) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(16) (a) "Institution of higher education", for the purposes of this part, means an ~~education~~ educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it

awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of ~~post-graduate~~ postgraduate or ~~post-doctoral~~ postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(17) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(18) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the division.

(b) The term "wages" ~~shall~~ does not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from ~~welfare~~ public assistance funds for services performed at the direction and request of such county welfare office.

(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(21) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment.

~~(22) The word "division" throughout the unemployment statutes refers to a unit of the Montana state department of labor and industry.~~

~~(23) The words "board of labor appeals" used in this chapter mean three persons appointed by the governor who are not public employees but who are attached to the Montana state department of labor and industry. The function of said board is to act in a quasi-judicial capacity for the hearing of disputes concerning the administration of~~

~~Montana's unemployment insurance laws.~~"

Section 37. Section 39-51-202, MCA, is amended to read:

"39-51-202. Employer defined. "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year exceeds the sum of $500;

(2) any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

(3) any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

(4) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of

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this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

(5) any employing unit which, having become an employer under subsection (1), (2), (3), or (4) has not, under 39-51-1101 ~~or--39-51-1102~~, ceased to be an employer subject to this chapter; or

(6) for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter."

Section 38. Section 39-51-203, MCA, is amended to read:

"39-51-203. Employment defined. (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" ~~shall include~~ includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of

operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service ~~shall be deemed~~ is considered to be localized within a state if:

(i) the service is performed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government ~~shall be deemed~~ is considered to be employment subject to this chapter if the individual performing such services is a resident of this state and the division approves the election of the employing unit for whom such services are performed that the entire service of such individual ~~shall be deemed~~ is

considered to be employment subject to this chapter.

(4) ~~Services~~ Service performed by an individual for wages ~~shall be deemed~~ is considered to be employment subject to this chapter unless and until it is shown to the satisfaction of the division that:

(a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact;

(b) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(c) such individual is customarily engaged in an independently established trade, occupation, profession, or business.

(5) The term "employment" ~~shall include~~ includes service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. ~~Effective after July 1, 1975, the~~ The term "employment" ~~shall include~~ includes service performed after July 1, 1975, by all individuals, including without limitations those individuals who work

for the state of Montana, its university, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" ~~shall include~~ includes service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" ~~shall include~~ includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, after December 31, 1971, in the employ of an American employer, other than service which is deemed considered employment under the provisions of subsection (2) of this section or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection ~~is~~ are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(8) Agricultural labor exempted under 39-51-204 ~~shall~~ be is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays ~~$40,000~~ $20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar

year or employs ~~20~~ 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has agricultural employment, all employees are covered under the chapter regardless of the amount of money expended for agricultural purposes.

(9) Domestic service exempted under 39-51-204(1)(b) ~~shall be~~ is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has domestic employment, all employees are covered under the chapter regardless of the amount of money expended for domestic purposes."

Section 39. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" ~~shall~~ does not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the

crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of 18 in the employ of his father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress, provided that the division ~~is--hereby--authorized--and-directed-to~~ must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ~~10-days after--publication--thereof~~ in the manner prescribed in ~~39-51-302--for--general--rules~~ the Montana Administrative Procedure Act for the adoption of rules, to provide

reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such act of congress or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salesmen paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of

unemployment insurance;

(j) service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital.

(2) "Employment" ~~shall~~ does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed

minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in the employ of a school which is not an institution of higher education, prior to December 31, 1977;

(d) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(f) for a state prison or other state correctional or custodial institution by an inmate of that institution."

~~Section 41.--Section--39-51-302,--MCA,--is--amended--to read:~~

~~"39-51-302.--Regulations--and-general-and-special-rules~~ Adoption of rules. ~~General-and-special-rules-may-be-adopted, amended,-or-rescinded-by--the--division--only--after--public~~

hearing--or-opportunity-to-be-heard-thereon,-of-which-proper notice-has-been-given.-General-rules-shall-become--effective 10--days--after--filing--with--the--secretary--of--state-and publication-in-one-or-more-newspapers-of-general-circulation in-this-state.-Special-rules-shall-become-effective-10--days after--notification--to-or-mailing-to-the-last-known-address of-the-individuals-or-concerns-affected-thereby.-Regulations Rules may be adopted, amended, or rescinded repealed by the division and shall become effective in the manner and at the time prescribed by law pursuant to the Montana Administrative Procedure Act."

Section 40. Section 39-51-304, MCA, is amended to read:

"39-51-304. Personnel. (1) Subject-to-other-provisions of--this--chapter Except as otherwise provided, the division is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this chapter. The division may delegate to any such persons such power and authority as it deems considers reasonable and proper for the effective administration of this chapter and may in its discretion bond any person handling money or signing checks hereunder.

(2)--The-division-shall-classify-positions--under--this

chapter--and--shall--establish--salary-schedules-and-minimum personnel-standards-for-the--positions--so--classified.--The division--shall--provide--for-the-holding-of-examinations-to determine-the-qualifications-of-applicants-for-the-positions so-classified-and,-except-for-temporary-appointments-of--not to--exceed--6--months--in--duration,-such-personnel-shall-be appointed--on--the--basis--of--efficiency--and--fitness---as determined-in-such-examinations.

(3)(2) No person who is an officer or committee member of any political party organization or who holds or is a candidate for any public office shall may be appointed or employed under this chapter.

(4)(3) The division shall establish-and-enforce-fair and-reasonable-regulations-for-appointments,-promotions,-and demotions-based-upon-ratings-of-efficiency-and--fitness--and for--terminations--for--cause hire in accordance with merit system principles adopted by the merit system council."

Section 41. Section 39-51-309, MCA, is amended to read:

"39-51-309. Representation of division and state in court. (1) In any civil action to enforce the provisions of this chapter the division and the state may be represented by any qualified attorney who is employed by the division and is designated by it for this purpose or, at the division's or board's request, by the attorney general.

(2) All criminal actions for violation of any provision of this chapter or of any rules issued pursuant thereto shall be prosecuted by the attorney general of the state or, at his request and under his direction, by the prosecuting county attorney of the county wherein the crime was committed."

Section 42. Section 39-51-401, MCA, is amended to read:

"39-51-401. Unemployment compensation account -- establishment and control. There is hereby established separate and apart from all public money or funds of this state an account in the agency fund known as the unemployment compensation account, which shall be administered by the division exclusively for the purposes of this chapter. Any reference to the unemployment compensation fund in this code ~~shall be taken to mean~~ means the unemployment compensation account in the agency fund. All money in the account shall be mingled and undivided. This account shall consist of:

(1) all contributions collected under this chapter, ~~inclusive of voluntary contributions as provided in [87-1-109(c)(4), R.C.M. 1947]~~, and payments made in lieu of contributions as provided in ~~39-51-1106~~ subsections (2) and (3) of 39-51-1106;

(2) interest earned upon any money in the account;

(3) any property or securities acquired through the use of money belonging to the account;

(4) all earnings of such property or securities; and

(5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended."

Section 43. Section 39-51-402, MCA, is amended to read:

"39-51-402. Unemployment compensation account -- state treasurer ex officio custodian -- accounts and deposits. (1) The state treasurer ~~shall be~~ is the ex officio the treasurer and custodian of the unemployment compensation account and shall administer such account in accordance with the directions of the division and shall issue his warrants upon it in accordance with such regulations as the division shall prescribe. He shall maintain within the account three separate accounts:

(a) a clearing account;

(b) an unemployment trust fund account; and

(c) a benefit account.

(2) All money payable to the unemployment compensation account, upon receipt thereof by the division, ~~shall~~ must be forwarded to the treasurer who shall immediately deposit ~~them~~ it in the clearing account. Refunds payable pursuant to ~~39-51-1104, 39-51-1105,~~ 39-51-1110, ~~39-51-1301,~~ or

~~39-51-1303 through 39-51-1306~~ may be paid from the clearing account upon warrants issued by the treasurer under the direction of the division. After clearance thereof, all other money in the clearing account ~~shall~~ must be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(3) The benefit account ~~shall consist~~ consists of all money requisitioned for the payment of benefits from this state's account in the unemployment trust fund.

(4) Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the division, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium ~~shall~~ may be paid out of the unemployment compensation account.

(5) The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the unemployment compensation account in an

amount fixed by the division and in a form prescribed by law or approved by the attorney general. Premiums for ~~said~~ the bond shall be paid from the unemployment compensation administration account."

Section 44. Section 39-51-1109, MCA, is amended to read:

"39-51-1109. Contribution appeals. Any person aggrieved by any decision, determination, or redetermination of the division involving contribution liability, contribution rate, application for refund, or the charging of benefit payments to employers making payment in lieu of contributions is entitled to a review by the division or its authorized representative, hereinafter referred to as a deputy. The decision of the deputy ~~shall be deemed to be~~ is considered the decision of the division. The division or the deputy conducting the review may refer the matter to an appeals referee, may decide the application for review on the basis of such facts and information as may be obtained, or may hear argument to secure further fats. After such review, notice of the decision ~~shall~~ must be given to the employing unit. Such decision made pursuant to such review ~~shall be deemed to be~~ is considered the final decision of the division unless the employing unit or any other such interested party, within 5 calendar days after delivery of such notification or within 7 calendar days after such

notification was mailed to his ~~last-known~~ last-known address, files an appeal from this decision. Such appeal will be referred to an appeals referee who shall make his decisions with respect thereto in accordance with the procedure prescribed in ~~[87-1-87(c)]~~ 39-51-2403."

Section 45. Section 39-51-1201, MCA, is amended to read:

"39-51-1201. Experience rating and classification of employers. (1) The division shall for each calendar year classify employers in accordance with their actual contributions and unemployment experience and shall determine for each employer the experience rate which shall apply to him throughout the calendar year. The division shall apply such form of classification or experience rating system which is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of employment.

(2) In making such classification, the division shall take into account each of the following factors relating to the unemployment hazard shown by each employer on the basis of:

(a) number of years the employer has paid contributions;

(b) average quarterly percentage declines in total payrolls for the last 3 fiscal years ending June 30; and

(c) average annual net percentage declines in total payrolls for the last 3 fiscal years ending June 30, the computation date.

(3) Wages shall be adjusted in the determination of the annual and quarterly decrease percentages of any employer's payroll in whose establishment there was in any year in the qualifying period of such employer a stoppage of work due to a strike which caused a decrease in such employer's payroll of such magnitude that his actual quarterly and annual payroll caused by such a decrease or decreases when used with other annual and quarterly payroll decreases, if any, in his qualifying period would cause an increase in such employer's contribution rate. An employer's adjusted quarterly payroll for that quarter in which such stoppage of work existed shall be determined by multiplying each such payroll or adjusted payroll for the quarter immediately preceding the quarter in which such stoppage of work existed by the average quarterly variation ratio. The average quarterly variation ratio shall be computed by:

(a) dividing the payroll or, if adjusted, the adjusted payroll for that quarter in each of the prior years of an employer's qualifying period which corresponds to the respective quarter in which a stoppage of work due to a strike existed by the payroll or adjusted payroll for the

respective quarter immediately preceding such corresponding quarter; and

(b) totaling the ratio thus obtained and dividing by the number of such ratios."

Section 46. Section 39-51-1303, MCA, is amended to read:

"39-51-1303. Collection of unpaid contributions by civil action. (1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due ~~shall~~ must be collected by civil action in the name of the division, Montana department of labor and industry, and the employer adjudged in default shall pay the costs of such action.

(2) Civil actions brought under this section to collect contributions or interest thereon from an employer ~~shall~~ must be heard by the court at the earliest possible date and ~~shall~~ must be ARE entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law of this state.

(3) ~~Action~~ An action for the collection of contributions due ~~shall~~ must be brought within 5 years after the due date of such contributions~~, otherwise to be~~ or be IT IS barred ~~as provided in [93-2604]~~."

Section 47. Section 39-51-2104, MCA, is amended to

read:

"39-51-2104. General benefit eligibility conditions. An unemployed individual ~~shall be~~ is eligible to receive benefits for any week of total unemployment within his benefit year only if the division finds that:

(1) he has registered for work at and thereafter has continued to report at an employment office in accordance with such regulation as the division may prescribe, except that the division may, by regulation, prescribe that such ~~types of~~ in cases ~~or situations with respect to~~ in which it finds ~~that compliance with~~ such requirements ~~would be~~ oppressive, or ~~would be~~ inconsistent with the purposes of this chapter. ~~provide for registration~~ an unemployed individual may register and reporting report for work by mail or through other governmental agencies;

(2) he has made a claim for benefits in accordance with the provisions of 39-51-2401;

(3) he is able to work and is available for work and is seeking work; provided, however, that no claimant ~~shall~~ be is considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has been offered to such claimant after the beginning of such illness or disability;

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(4) prior to any week for which he claims benefits he has been totally unemployed for a waiting period of 1 week. However, if claimant's benefit year expires during a period of compensable unemployment, claimant will continue to receive weekly benefits in a new benefit year, if otherwise eligible, without interruption to serve the waiting week for the new benefit year but will thereafter be required to serve the waiting week before receiving benefits during subsequent unemployment in the new benefit year. No week ~~shall--be~~ is counted as a week of total unemployment for the purposes of this subsection:

(a) if benefits have been paid with respect thereto;

(b) unless the individual was eligible for benefits with respect thereto;

(c) unless it occurs within the benefit year of the claimant;

(d) unless it occurs after benefits first could become payable to any individual under this chapter."

Section 48. Section 39-51-2108, MCA, is amended to read:

"39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations. Benefits based on service in employment defined in ~~39-51-203~~ subsections (5) and (6) of 39-51-203 and ~~39-51-204~~ subsections (2) and (3) ~~and [87-110(d)(v)-R.C.M. 1947]--shall~~

be of 39-51-204 are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research, or principal administrative capacity for an educational institution ~~shall~~ may not be paid to an individual for any week of unemployment which begins during the period between 2 successive academic years or during a similar period between 2 regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract to perform services in any such capacity for any such educational institution for both such academic years or both such terms."

Section 49. Section 39-51-2304, MCA, is amended to read:

"39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) Effective April 1, 1977, an individual ~~shall--be~~ is disqualified for benefits if he ~~failed~~ fails without good cause either to apply for available and suitable work when so directed by the employment office or the division or to accept suitable work offered to him which he is physically able and mentally qualified to perform or to return to his customary self-employment, if any, when so directed by the division.

Such disqualification ~~shall continue~~ continues for the week in which such failure ~~occurred~~ occurs and until ~~he~~ the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of his weekly benefit amount in 6 separate weeks subsequent to the date the act causing the disqualification occurred, with 6 weeks' reduction in benefit duration, as determined by the division, provided he has not left this work under disqualifying circumstances.

(2) In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(3) Notwithstanding any other provisions of this chapter, no work ~~shall~~ may be ~~deemed~~ considered suitable and benefits ~~shall~~ may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the

individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization."

Section 50. Section 39-51-3206, MCA, is amended to read:

"39-51-3206. Liability for wrongful or improper receipt of benefits. Any person who, by reason of the nondisclosure or misrepresentation by him or by another of a material fact, irrespective of whether such nondisclosure or misrepresentation was known or fraudulent, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case or while he was disqualified from receiving benefits shall, in the discretion of the division, either be liable to have such sum deducted from any future benefits payable to him under this chapter or shall be liable to repay to the division for the unemployment compensation fund a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this chapter for the collection of past due contributions. ~~Action~~ An action for collection of overpaid benefits ~~shall~~ must be brought within 5 years after the date

of such overpayment~~, otherwise to be~~ or be IT IS barred as ~~provided in [93-2604].~~"

Section 51. Section 39-71-101, MCA, is amended to read:

"39-71-101. Short title. This chapter ~~shall be known~~ and may be cited as ~~the Workmen's Compensation Act or~~ the Workers' Compensation Act."

Section 52. Section 39-71-102, MCA, is amended to read:

"39-71-102. Reference to plans. Whenever compensation plan No. 1, 2, or 3 ~~or the safety provisions of this chapter shall be~~ is referred to, such reference shall also ~~be held to include~~ includes all other sections which are applicable to the subject matter of such reference."

Section 53. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter shall have the following meanings ~~hereinafter defined~~:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the division of employment security of the Montana department of labor and industry. It is established at the nearest whole dollar number and shall must be adopted by the division of workers'

compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving wife or husband;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 25 years who is a full-time student in an accredited school;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury. However [however], such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists].

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer. Any person hauling or assisting in hauling of sugar beets or grains, in case of emergency, ~~shall be~~ is considered engaged in casual employment.

(4) "Child" ~~shall include~~ includes a posthumous child, a dependent stepchild, a child legally adopted prior to the injury, and an illegitimate child legitimized prior to the injury.

(5) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(6) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(7) "Husband" or "widower" means only a husband or widower living with or legally entitled to be supported by the deceased at the time of her injury.

(8) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the industrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in ~~39-71-501 through 39-71-507~~ part 5 of this chapter.

(9) "Invalid" means one who is physically or mentally incapacitated.

(10) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

(11) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of

the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the division, as the case may actually be on December 31 of such current year.

(12) "Permanent partial disability" means a condition resulting from injury as defined in this chapter that results in the actual loss of earnings or earning capability less than total that exists after the injured ~~workman~~ worker is as far restored as the permanent character of the injuries will permit.

(13) "Permanent total disability" means a condition resulting from injury as defined in this chapter that results in the loss of actual earnings or earning capability that exists after the injured workman worker is as far restored as the permanent character of the injuries will permit and which results in the ~~workman~~ worker having no reasonable prospect of finding regular employment of any kind in the normal labor market.

(14) The term "physician" ~~shall include~~ includes "surgeon" and in either case ~~shall mean~~ means one authorized

by law to practice his profession in this state.

(15) "The plant of the employer" ~~shall include~~ includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(16) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(17) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(18) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished ~~and--shall--embrace--all---safety---devices---and safeguards--provided--or-prescribed-by-the-safety-provisions of-the-chapter-for-the-purpose-of-mitigating-or-preventing-a specific-danger.~~

(19) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured ~~workman~~ worker is as far restored as the permanent character

of the injuries will permit.

(20) "Wages" means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week, and overtime is not to be considered. Sick leave benefits accrued by employees of public corporations, as defined by subsection (16) of this section, are considered wages.

(21) "Wife" or "widow" means only a wife or widow living with or legally entitled to be supported by the deceased at the time of the injury.

(22) "Year", unless otherwise specified, means calendar year."

Section 54. Section 39-71-302, MCA, is amended to read:

"39-71-302. What included in computing payroll. In computing the payroll, the entire compensation received by every ~~workman~~ worker employed under this chapter ~~shall be~~ is included, whether ~~it be~~ in the form of salary, wage, piecework, or otherwise and whether payable in money, board, or otherwise."

Section 55. Section 39-71-304, MCA, is amended to read:

"39-71-304. Books, records, and payrolls to be open to inspection -- penalty for refusal. The books, records, and payrolls of the employer pertinent to the administration of

this chapter ~~shall~~ must always be open to inspection by the division or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of ~~men~~ persons employed, and such other information as may be necessary for the division and its management under this chapter. Refusal on the part of the employer to submit said books, records, and payrolls for such inspection shall subject the offending employer to a penalty of $100 for each offense, to be collected by civil action in the name of the state and paid into the state treasury."

Section 56. Section 39-71-306, MCA, is amended to read:

"39-71-306. Plan one employers and plan two insurers to file duplicate receipts paid for injuries and statements of medical expenditures. Every employer coming under the provisions of compensation plan No. 1 and every insurer coming under the provisions of compensation plan No. 2 shall, on or before the 15th day of each and every month, file with the division:

(1) duplicate receipts for all payments made during the previous month to injured workers or their beneficiaries or dependents; and

(2) statements showing the amounts expended during the previous month for medical, surgical, and hospital services for injured workers and for the burial of ~~injured~~ deceased

workers."

Section 57. Section 39-71-309, MCA, is amended to read:

"39-71-309. Hospitals to submit schedule of fees and charges -- effective period of schedule -- when to be submitted. All hospitals must submit to the division a schedule of fees and charges for treatment of injured ~~workmen~~ workers to be in effect for at least a 12-month period unless the division and the hospital agree to interim amendments of the schedule. The schedule must be submitted at least 30 days prior to its effective date and ~~shall~~ may not exceed the charges prevailing in the hospital for similar treatment of private patients."

Section 58. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation

plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under the ~~this~~ chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3);

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership;

(e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(f) any person performing services in return for aid or sustenance only;

(g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter."

Section 59. Section 39-71-406, MCA, is amended to read:

"39-71-406. Deduction from wages of any part of premium a misdemeanor -- hospital contributions not prohibited. It ~~shall be~~ is unlawful for the employer to deduct or obtain any part of any premium required to be paid

by this chapter from the wages or earnings of his ~~workmen or any of them~~ workers, and the making or attempt to make any such deduction ~~shall be~~ is a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this chapter provided."

Section 60. Section 39-71-410, MCA, is amended to read:

"39-71-410. Employees bound by plan adopted by employer -- election not to be bound by corporate officers. (1) Every employee whose employer is bound by the provisions of this chapter ~~shall become~~ is subject to and be bound by the provisions of that plan of compensation ~~which shall have~~ been adopted by his employer, except that pursuant to such rules as the division shall from time to time promulgate and subject in all cases to the review of the division, officers of private corporations may elect not to be bound as employees under the ~~this~~ chapter by a written notice in the form provided by the division, served in the following manner:

(a) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering ~~said~~ the notice to the board of directors of the employer;

(b) if the employer has elected to be bound by the provisions of compensation plan No. 2, by delivering ~~said~~

the notice to the board of directors of the employer or the insurer;

(c) if the employer has elected to be bound or is bound by the provisions of compensation plan No. 3, by delivering ~~said~~ the notice to the division.

(2) The appointment or election of an officer of a corporation for the purpose of excluding an employee from coverage under the this chapter ~~shall~~ does not entitle such officer to elect not to be bound as an employee under the this chapter. In any case, the notice ~~shall~~ must be signed by the officer under oath or equivalent affirmation and is subject to the penalties for false swearing.

(3) The division shall review any election by officers of private ~~corporation's election~~ corporations not to be bound as an employee to assure compliance with this chapter."

Section 61. Section 39-71-411, MCA, is amended to read:

"39-71-411. Provisions of chapter exclusive remedy -- nonliability of insured employer. For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under the this chapter, the provisions of the this chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers'

Compensation Act, an employer is not subject to any liability whatever for the death of or personal injury to ~~any employee~~ an employee covered by the Workers' Compensation Act. The Workers' Compensation Act binds the employee himself, and in case of death binds his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer and the servants and employees of such employer and those conducting his business during liquidation, bankruptcy, or insolvency."

Section 62. Section 39-71-501, MCA, is amended to read:

"39-71-501. Definition of uninsured employer. For the purposes of ~~39-71-501 through 39-71-507~~ this part, the ~~words~~ "uninsured employer" ~~mean~~ means an employer who has not properly complied with the provisions of 39-71-401."

Section 63. Section 39-71-506, MCA, is amended to read:

"39-71-506. Collection of payments from uninsured employer by suit. If, upon demand of the division, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the sums may be collected by the division through suit. The division may settle through compromise with an uninsured employer the amount due the fund under ~~39-71-501~~

through 39-71-507 39-71-504."

Section 64. Section 39-71-510, MCA, is amended to read:

"39-71-510. Limitation on benefit entitlement under fund. Notwithstanding the provisions of 39-71-402, 39-71-407, and 39-71-501 through 39-71-507 39-71-502, and 39-71-503, injured employees or an employee's beneficiaries who elect to receive benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund shall must be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future."

Section 65. Section 39-71-602, MCA, is amended to read:

"39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed. No limitation of time as provided in 39-71-601 or in this chapter, known as the Workers' Compensation Act, shall run as against any injured workman worker who is mentally incompetent and without a guardian or an injured minor under 18 years of age who may be without a parent or guardian. A

guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitations as provided for in 39-71-601 shall begin to run on the date of appointment of such guardian or when such minor arrives at the age of 18 years of age, whichever date may be the is earlier."

Section 66. Section 39-71-603, MCA, is amended to read:

"39-71-603. Notice of claims claim for injuries other than death to be submitted within sixty days -- exception -- actual notice. No claims claim to recover compensation under this [act] chapter for injuries not resulting in death shall may be maintained unless, within 60 days after the occurrence of the accident which is claimed to have caused the injury, notice in writing stating the name and address of the person injured, the time and place where the accident occurred, and the nature of the injury and signed by the person injured or someone in his behalf shall be is served upon the employer or the insurer, except as otherwise provided in 39-71-602. However, actual knowledge of such accident and injury on the part of such employer or his managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury shall be is equivalent to such service."

Section 67. Section 39-71-721, MCA, is amended to

read:

"39-71-721. Compensation for injury causing death. (1) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased, as the case may be, ~~shall receive~~ is entitled to the same compensation as though the death occurred immediately following the injury, but the period during which the death benefit ~~shall be~~ is paid shall be reduced by the period during or for which compensation was paid for the injury.

(2) To beneficiaries as defined in subsections (2)(a) through (2)(d) of 39-71-116, weekly compensation benefits for injury causing death ~~shall be~~ are computed at 66 2/3% of the decedent's wages. The maximum weekly compensation benefits ~~shall~~ may not exceed the state's average weekly wage. The minimum weekly compensation for death ~~shall be~~ is 50% of the state's average weekly wage, but in no event ~~shall~~ may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in subsections (2)(e) and (2)(f) of 39-71-116, weekly benefits ~~shall~~ must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation ~~shall~~ may not exceed the state's average weekly wage.

(4) If the decedent leaves no beneficiary as defined

in 39-71-116(2), a lump-sum payment of $3,000 ~~shall~~ must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies or ~~if the widow or widower remarries~~, the right of such beneficiary ~~or widow or widower~~ to compensation under this chapter ~~shall cease~~ ceases. Death benefits ~~shall~~ must be paid to a widow or widower for life or until remarriage, and in the event of remarriage, 2 years' benefits ~~shall~~ must be paid in a lump sum to the widow or widower.

(6) In all cases, benefits ~~shall~~ must be paid to beneficiaries, as defined in 39-71-116(2)."

Section 68. Section 39-71-738, MCA, is amended to read:

"39-71-738. Adjustment of compensation in case of further injuries. Should a further accident occur to a ~~workman~~ worker who is already receiving compensation hereunder or who has been previously the recipient of a payment ~~or payments~~ under this chapter, his further compensation ~~shall be~~ is adjusted according to the other provisions of this chapter and with regard to his past receipt of compensation."

Section 69. Section 39-71-739, MCA, is amended to read:

"39-71-739. Compensation in case of changes in degree of injury. If aggravation, diminution, or termination of

disability takes place or ~~be~~ is discovered after the rate of compensation ~~shall have been~~ is established or compensation is terminated in any case where the maximum payments for disabilities as provided in this chapter ~~have~~ are not been reached, adjustments may be made to meet such changed conditions by increasing, diminishing, or terminating compensation payments in accordance with the provisions of this chapter."

Section 70. Section 39-71-801, MCA, is amended to read:

"39-71-801. Occupational deafness compensated as provided in part. Regardless of other definitions of injury and time limitations imposed by this ~~[act]~~ chapter, there ~~shall be~~ compensation is awarded for occupational deafness as provided in this part."

Section 71. Section 39-71-807, MCA, is amended to read:

"39-71-807. Compensation for wage loss where employee transferred due to occupational deafness. An employee who because of occupational deafness is transferred by his employer to other employment and thereby sustains actual wage loss ~~shall~~ must be compensated at the rate provided in 39-71-703, not exceeding $3,500 in the aggregate from all employers. "Time of injury", "incurred such injury", or "date of injury" in such case ~~shall be~~ is the date of wage

loss."

Section 72. Section 39-71-813, MCA, is amended to read:

"39-71-813. Limitation provisions applicable -- when provisions begin to run. The limitation provisions in this ~~[act]--shall~~ chapter control claims arising under this part. Such provisions ~~shall~~ run from the first date upon which claim may be filed or from the date of subsequent death, provided that no claim ~~shall~~ may accrue to any dependent unless an award has been issued or liability admitted."

Section 73. Section 39-71-901, MCA, is amended to read:

"39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Vocationally handicapped" means a person who has a medically certifiable permanent physical impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

(2) "Certifying agency" means the section---of ~~rehabilitation~~, division of workers' compensation.

(3) "Certificate" means documentation issued by the certifying agency to an individual who is vocationally handicapped.

(4) "Fund" means the subsequent injury fund."

Section 74. Section 39-71-902, MCA, is amended to read:

"39-71-902. Fund to receive payment from insurer for each death under chapter -- assessment of insurers. (1) In every case of the death of an employee under this ~~[act]~~ chapter, the insurer shall pay to the fund the sum of $1,000. In addition, the division may assess every insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment ~~shall~~ must be transmitted annually to the subsequent injury fund by the employer or insurer.

(2) When, in the judgment of the administrator, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities, the administrator may at his discretion suspend or reduce further collection of assessments for a period of time determined by the administrator."

Section 75. Section 39-71-903, MCA, is amended to read:

"39-71-903. Procedure and practice. When a vocationally handicapped person receives a personal injury, the procedure and practice provided in this ~~[act]~~ chapter applies to all proceedings under this part, except where specifically otherwise provided herein."

Section 76. Section 39-71-907, MCA, is amended to read:

"39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter -- employer liability for compensation limited. A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and resulting in death or disability ~~shall~~ must be paid compensation in the manner and to the extent provided in this ~~[act]~~ chapter or, in case of his death resulting from such injury, the compensation ~~shall~~ must be paid to his beneficiaries or dependents. The liability of the employer for payment of compensation, for furnished medical care, and burial as provided in this ~~[act]--shall be~~ chapter is limited to those benefits occurring during the period of 104 weeks after the date of injury. Thereafter, all compensation and the cost of all medical care and burial ~~shall be~~ is the liability of the fund."

Section 77. Section 39-71-908, MCA, is amended to read:

"39-71-908. Notification of fund of its potential liability under part -- review by fund. Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the employer, carrier, or the industrial insurance fund, as the case may be, shall notify the fund

whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may review, at reasonable times, such information as the employer, carrier, or industrial insurance fund es has regarding the accident and the nature and extent of the injury and disability."

Section 78. Section 39-71-910, MCA, is amended to read:

"39-71-910. Procedure for resolving disputes as to liability under part. (1) If an employee was employed or retained in employment under the provisions of this part and a dispute or controversy arises as to payment of benefits or the liability therefor, the division shall hold a hearing and resolve all disputes. On motion made in writing by the employer, carrier, or industrial insurance fund, the administrator shall join the fund as a party defendant.

(2) The division, within 5 days of the entry of an order joining the fund as a party defendant, shall give the fund written notice thereof not less than 20 days before the date of hearing and shall include the name of the employee, and the employer, and the date of the alleged injury or disability. The fund named as a defendant shall have 10 days after the date of notification to file objections to being named as a party defendant. On the date of the hearing at which the liability of the parties is determined, the

hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(3) At the time of the hearing, the employer and fund may appear, cross-examine witnesses, give evidence, and defend both on the issue of liability of the employer to the employee and on the issue of the liability of the fund.

(4) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability of the employer and the fund."

Section 79. Section 39-71-1001, MCA, is amended to read:

"39-71-1001. Referral of disabled workers to department of social and rehabilitation services for vocational rehabilitation. The division shall refer to the department of social and rehabilitation services workers who have become permanently disabled as the result of injuries sustained within the scope and course of employment by an employer enrolled under the Workers' Compensation Act of the state of Montana and who, in the opinion of the division, can be vocationally rehabilitated. The department of soc and rehabilitation services shall provide for the vocational rehabilitation of the injured workers under the [illegible]

of ~~[Title--41,-chapter-8,-R.C.M.-1947]~~ Title 53, chapter 1, parts 1 and 2."

Section 80. Section 39-71-1003, MCA, is amended to read:

"39-71-1003. Eligibility for benefits under chapter not affected -- other expenses payable. The eligibility of any injured ~~workman~~ worker to receive other benefits under the Workers' Compensation Act ~~shall~~ is in no way be affected by his entrance upon a course of vocational rehabilitation as herein provided, but he may be paid, in addition thereto, upon the certification of the ~~vocational-rehabilitation division~~ department of social and rehabilitation services from funds herein provided:

(1) his actual and necessary travel expenses from his place of residence to the place of training and return;

(2) his living expenses while in training in an amount not in excess of $50 per week; and

(3) his expenses for tuition, books, and necessary equipment in training."

Section 81. Section 39-71-2101, MCA, is amended to read:

"39-71-2101. General requirements for electing coverage under plan. An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the division of his solvency and financial ability to pay

the compensation and benefits in this chapter provided for and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, and may, by order of the division, make such payments directly to his employees as they may become entitled to receive the--same under the terms and conditions of this chapter."

Section 82. Section 39-71-2201, MCA, is amended to read:

"39-71-2201. Election to be bound by plan. (1) Any employer except those specified in ~~[92-206]~~ 39-71-403 may, by filing his election to become bound by compensation plan No. 2, insure his liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact such business in this state.

(2) Any employer electing to become bound by compensation plan No. 2 shall make his election on the form and in the manner prescribed by the division."

Section 83. Section 39-71-2206, MCA, is amended to read:

"39-71-2206. Deposits by insurer with division to guarantee payment of liability. (1) Before issuance of any policy by an insurer as herein authorized, such the insurer must deposit with the division bonds of the United States or the state of Montana or of any school district, county,

city, or town in the state of Montana or a corporate surety bond made out to and approved by the division in an amount not less than $5,000 or more than $100,000, as the division may determine. If any insurer fails to discharge any liability after the amount thereof ~~shall be~~ is determined by the division and within the time limited by the division, the division shall convert the bonds or such part thereof as is necessary into cash and from the proceeds liquidate such liability, and thereafter the insurer must make an additional deposit to meet any deficiency caused thereby. It is intended hereby to give the division the discretion in the matter of whether an insurer has failed to discharge any liability.

(2) Within 30 days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the division for the protection and guarantee of the payment of such liability in such sum as the division may direct. However, if the division ~~deems~~ considers the amount on deposit by the insurer under the provisions of subsection (1) of this section sufficient to cover all liabilities of the insurer, then no further deposit ~~shall~~ may be required.

(3) Any deposit made under the provisions of compensation plan No. 2 ~~shall~~ must be held in trust by the

division as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the division as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor by withdrawing the same or any part thereof and substituting other deposits therefor. Upon proof of the final payment of the liability for which such deposit was made, any deposit remaining ~~shall~~ must be returned to the depositor. All earnings made by such deposit ~~shall be~~ must first be applied upon any liability of the depositors, and if no such liability exists, then such earnings ~~shall~~ must upon demand be delivered to such depositor. The division and its bondsmen ~~shall be~~ are liable for the value and safekeeping of such deposit and shall at any time, upon demand of ~~its bondsmen, the~~ a depositor, ~~or the division~~, account for the same and the earnings thereof."

Section 84. Section 39-72-101, MCA, is amended to read:

"39-72-101. Short title. This chapter ~~shall be known~~ may be cited as "~~The~~ the "Occupational Disease Act of Montana"."

Section 85. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116(2).

(2) "Child" is as defined in 39-71-116(4).

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing any work for remuneration or profit. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".

(4) "Division" is as defined in 39-71-116(5).

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Husband" is as defined in 39-71-116(7).

(8) "Independent contractor" is as defined in 39-71-120.

(9) "Insurer" is as defined in 39-71-116(8). The term includes an employer who is self-insured under compensation plan No. 1.

(10) "Invalid" is as defined in 39-71-116(9).

(11) ~~The term "occupational~~ Occupational disease" ~~shall~~ mean means all diseases arising out of or contracted from

and in the course of employment.

(12) "Order" is as defined in 39-71-116(10).

(13) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(14) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2), and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(15) "Wages" is as defined in 39-71-116(20).

(16) "Wife" is as defined in 39-71-116(21).

(17) "Year" is as defined in 39-71-116(6) and 39-71-116(22)."

Section 86. Section 39-72-307, MCA, is amended to read:

"39-72-307. Deduction from wages of any part of premium a misdemeanor -- hospital contributions not prohibited. It ~~shall be~~ is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of his workmen workers, or any of them, and the making or attempt to make

any such deduction ~~shall be~~ is a misdemeanor, except that nothing in this section ~~shall~~ may be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this chapter provided."

Section 87. Section 39-72-508, MCA, is amended to read:

"39-72-508. Death due to pneumoconiosis. The claimant must submit the evidence necessary to establish that the miner's death was due to pneumoconiosis and that the pneumoconiosis arose out of employment in coal mines. Death will be found due to a ~~respirable~~ respiratory disease when death is ascribed to a chronic dust disease or to another chronic disease of the lung. Death will not be found due to a ~~respirable~~ respiratory disease in those cases in which the disease reported does not suggest a reasonable possibility that death was in fact due to pneumoconiosis; e.g., cancer of the lung, disease due to trauma, or pulmonary emboli. However, the presumptions established in subsections (2) and (3) of 39-72-501 apply."

Section 88. Section 39-72-701, MCA, is amended to read:

"39-72-701. Compensation for total disability or death due to occupational disease other than pneumoconiosis. The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational

disease other than pneumoconiosis, or the beneficiaries and dependents of the employee in the case of death caused by an occupational disease other than pneumoconiosis, ~~shall be~~ are entitled to under this chapter shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time as is provided in cases of temporary total disability, permanent total disability, and in cases of injuries causing death under the Workers' Compensation Act ~~of the state of Montana~~."

Section 89. Section 39-72-702, MCA, is amended to read:

"39-72-702. Compensation for total disability or death due to pneumoconiosis. Benefit payments for total disability or death due to pneumoconiosis shall, for the purpose of this chapter, be made as follows:

(1) In the case of total disability of a miner due to pneumoconiosis, the disabled miner shall be paid benefits during the disability at the rate of $155 per month.

(2) In the case of death of a miner due to pneumoconiosis or of a miner receiving benefits under this ~~part~~ subsection (1), benefits shall be paid to the miner's surviving spouse, if any, at the rate the deceased miner would receive such benefits if totally disabled.

(3) In the case of an individual entitled to benefit payments under subsection (1) or (2) who has one or

dependents, the benefit payments ~~shall~~ must be increased at the rate of 50% of such benefit payments if such individual has one dependent, 75% if such individual has two dependents, and 100% if such individual has three or more dependents."

Section 90. Section 39-72-708, MCA, is amended to read:

"39-72-708. Prohibiting supplementing of benefits. No person receiving compensation or benefits under ~~[71-1081 to 71-1088, inclusive]~~ ~~shall be~~ chapter 73 of this title is entitled to compensation or benefits under this chapter."

Section 91. Section 39-73-109, MCA, is amended to read:

"39-73-109. Payment of benefits to surviving spouse. (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108, the surviving spouse, as long as such spouse remains unmarried, is entitled to receive the payments granted the deceased spouse.

(2) A person who otherwise is qualified to receive payments under subsection (1) of this section but whose spouse died prior to March 14, 1974, is hereby made eligible to begin receiving one-half of those payments; provided, however, a person is not eligible for these payments if her such spouse's taxable income is $6,800 or more per year."

Section 92. Repealer. Sections 41-901 through 41-909, 92-613, and 92-1340, R.C.M. 1947, are repealed.

-End-